10-317

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1883.

No. 220.

ERNEST D. CORKER, APPELLANT,

vs.

FRANCIS A. JONES, EXECUTOR OF MALCOLM A. JONES, DECEASED, GEORGE O. WARNOCK, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

FILED FEBRUARY 10, 1881.

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1 UNITED STATES OF AMERICA, } ss.
Southern District of Georgia, }

At a stated term of the 5th Circuit Court of the United States of America for the southern district of Georgia, held at the [SEAL.] United States court-rooms in the city of Savannah, in and for said district, on Friday, the 30th day of April, in the year of our Lord one thousand eight hundred and eighty—

Present: The Honorable Wm. B. Woods, judge of the 5th judicial circuit of the United States, presiding.

Bill for Injunction & Relief.

ERNEST D. CORKER, by next friend, compl't, }
and } In Equity.
FRANCIS A. JONES, ex'or, &c., et al., def'ts. }

Be it remembered that heretofore, to wit, on the 14th day of October, A. D. 1874, came the said complainant, by Henry B. Tompkins, esq., his solicitor, and filed his *bill* for injunction & relief against the defendants in the 5th Circuit Court of the United States for the southern district of Georgia, in the words and figures following, to wit:

2 *Bill.*

In equity. In the fifth Circuit Court of the United States of America for the southern district of Georgia.

To the judges of said Circuit Court, having jurisdiction in equity:

Ernest D. Corker, a minor, under the age of twenty-one years, by his next friend and guardian, Henry C. Hart, both citizens of and residing in the state of Alabama, brings this his bill against Francis A. Jones, executor of the estate of Malcom D. Jones, dec'd, late of Burke county, in the state of Georgia, who resides in the county of Emanuel, in the said southern district of Georgia; George O. Warnock, William Warnock, and James Gaines, of the county of Burke, in the said southern district of Georgia; Charles J. Miller, Edward D. Boit, and Robert A. Boit, of the county of Chatham, in said southern district of Georgia, and William A. McKenzie, (late copartner with said E. D. & R. A. Boit under the firm name of Boit & McKenzie, doing business at Savannah,) who is a resident and citizen of the state of Alabama. And your orator complains and says:

That on the day of January, eighteen hundred and fifty-nine, the father of your orator, Drury Corker, of said county of Burke, departed this life testate, leaving him surviving his wife, Sarah D. Corker, an only daughter, Sarah C., wife of said Henry C. Hart, of Eufaula, in the state of Alabama, and an only son, your orator, and

leaving his will, a certified copy of which is hereto annexed
3 marked Exhibit "A." and prayed to be made a part of this bill; which said will was duly probated in the said county of Burke, with the said Malcom D. Jones, deceased, John W. Carswell, and Henry C. Hart as executors thereunder, all of whom duly qualified as such, but neither of whom ever entered upon and discharged the duties of executor, except the said M. D. Jones, who died in said county of Burke on the day of September, eighteen hundred and sixty-nine, leaving a will under which the said Francis A. Jones duly qualified as sole executor on the first day of November, eighteen hundred and sixty-nine. And your orator further shows that under the last clause of the said will of Drury Corker said M. D. Jones was made guardian of the person and property of your orator, upon which guardianship said M. D. Jones duly entered. And that the said John W. Carswell and H. C. Hart were made trustees of the estate in said will of Drury Corker bequeathed to said Sarah C. Hart, who departed this life on the 7th day of Febr'y, eighteen hundred and sixty-four. And that your orator and his said mother continued to reside on his said place in Burke county, bequeathed to him by the 5th item of said will, until the death of the said Mrs. Sarah D. Corker on the 4th day of January, eighteen hundred and sixty-nine, soon after which time your orator went to reside in the state
4 of Alabama, when the said Henry C. Hart was duly qualified as his guardian, as fully appears by a certified copy of the letters of guardianship issued by the Probate Court of said state, and to be produced upon the hearing of this cause.

Your orator further shows that the said M. D. Jones, executor and guardian as aforesaid, made no return to the ordinary of said county of Burke as such executor of Drury Corker later than to the first of January, 1861, at which date there was due from him as such executor to said estate the sum of thirty-four hundred and thirty-four dollars and thirty-nine & ½ cents, ($3,434.39½,) as will be made to appear at the trial hereof by certified copies of *of* such returns taken from the records of the court of ordinary of said Burke county.

And your orator avers that the whole of said sum so in the hands of said M. D. Jones as executor as aforesaid, under the provisions of said will of Drury Corker, belonged to your orator, as the said Sarah C. Hart had been fully settled with by said executor. And your orator further shows that the said M. D. Jones then had in his hands five shares of the stock of the Augusta & Savannah Railroad Company, of about the value of five hundred dollars, which was the property of your orator under the 5th item of said will, and which has never been accounted for by said M. D. Jones nor his said
5 executor, D. A. Jones.

And your orator further shows that the said M. D. Jones, as guardian as aforesaid, made no returns as guardian to said court of ordinary of Burke county later than for the year eighteen hundred and sixty-three, at which time, by said returns, said guardian had brought the estate of your orator in debt to said guardian to

the amount of fourteen thousand nine hundred and sixty-two and 98-100 dollars in Confederate currency, ($14,962.98,) as will also appear by reference to certified copies of such returns to be produced at the trial herein. And your orator avers that said returns of said M. D. Jones, as guardian, were incomplete, incorrect, and untrue, and that in fact said guardian was largely indebted to your orator on the seventh day of January, eighteen hundred and sixty-four, the date of the said last return as guardian as aforesaid, as will fully appear by reference to his said returns as executor and guardian, and to certain matters and things herein set forth. Your orator further shows that a tract of land bequeathed to his said sister by the fourth item of said will of Drury Corker, and known as the Gilstrap and Western place, lying in said county of Burke, and containing twelve hundred acres, more or less, in compliance with the power vested in said trustees of said Sarah C. Hart, was sold by them to your orator through his said guardian, M. D. Jones, on or about the 24th
6 day of July, eighteen hundred and sixty-three, for the price of eighteen thousand dollars in the currency of the then Confederate States of America, and the titles duly recorded in the office of the clerk of the Superior Court of Burke county, on the day of , eighteen hundred and sixty-three; and that of said sum so paid by your orator for said Gilstrap & Western place, the sum of fifteen thousand and six hundred dollars was alleged to have been advanced for your orator by his said guardian, M. D. Jones, out of his own funds; said sum so alleged to have been advanced being at said date of 24th July, 1863, of about the value of twelve hundred ($1,200.00) dollars gold coin of the United States of America, and which sum, your orator avers, was not in fact advanced to him by the said M. D. Jones out of his own funds, as it was a far less amount than was then due to your orator from the estate of said D. Corker, and from said M. D. Jones, as executor and guardian as aforesaid.

Your orator further shows that at the time of the said alleged advance of Confederate money by said M. D. Jones to enable him to purchase the said Gilstrap and Watson place, there was in the hands of said guardian, besides the said railroad stock and the said sum of $3,434.39½, about one hundred and thirty-four bales of upland cotton belonging to your orator, of average size, weight, and quality, which had been raised on said homestead place of your orator after
7 the death of said Drury Corker, and out of which cotton the said M. D. Jones then promised and undertook to reimburse himself, and designated the whole or a part of said cotton as belonging to him, said M. D. Jones, as having been taken in payment of said alleged advance of Confederate money in July, 1863. And your orator avers that the said M. D. Jones failed to sell or dispose of said cotton and allowed it to remain on your orator's place until it was destroyed by the Federal troops in the latter part of the year eighteen hundred and sixty-four.

Your orator further shows that in the year eighteen hundred and

sixty-seven, while he was of the tender age of eleven years, the said M. D. Jones, being then your orator's guardian, and still largely indebted to your orator, induced the mother of your orator, Mrs. Sarah D. Corker, who was living with your orator on his place in Burke county, to file a bill on the equity side of the Superior Court of said county, in the name of your orator, by his next friend, Sarah D. Corker, as complainant, and against the said M. D. Jones, guardian, as defendant; in which said bill, through the direct imposition and misstatements of the said M. D. Jones, it was alleged that the estate of your orator was largely indebted to said Jones for his said alleged advance of fifteen thousand and six hundred dollars of Confederate money to purchase said Gilstrap and Watson place, and for divers other expenditures legiti-
8 mately made by the said Jones for your orator, and praying that the titles to said Gilstrap & Watson place—which place was then and is now of about the value of ten thousand dollars, or other large sum—be decreed to be divested out of your orator, and that it vest in said M. D. Jones; to which said bill said M. D. Jones filed an answer consenting to the said prayer; whereupon, at the November term, 1867, of the said Burke Superior Court, a jury found a consent verdict upon said bill, and on the following November term for the year 1868 the judge of said court granted an order upon said finding of the jury, in words and figures as set forth in Exhibit "B," hereto annexed, and prayed to be made a part of this bill, there having been no guardian *ad litem* appointed in said cause. And your orator avers that the original of said bill and answer so filed in the clerk's office of the Superior Court of Burke county has been lost or mislaid, but that certified copies of them will be produced upon the trial of this cause if said bill shall have been found; and that no other order or decree was made upon said bill except that set forth in "Exhibit B" herein, and that said M. D. Jones went into possession of said Gilstrap and Watson place without any other title or conveyance from any person or persons whomsoever. And your orator further avers and charges that the said decree by said court, so purporting to divest his title out of the said Gilstrap and Watson place, was and is absolutely conclusive, fraudulent, and void
9 in law, having been rendered upon an assumed and false statement of facts and by a court totally without jurisdiction in the premises.

Your orator further shows that after the death, as aforesaid, of the said M. D. Jones, his said executor, Francis A. Jones, took possession of the said "Gilstrap & Watson" place as part of the estate of the said M. D. Jones, and that as such executor he proceeded to sell and did sell, on the day of October, eighteen hundred and seventy-three, the whole of the said Gilstrap and Watson place, in three separate tracts or parcels, as follows, to wit: Lot number one (No. 1) of said place, containing four hundred sixty-three and one-half acres, more or less, was sold to George O. Warnock for the price of eighteen hundred and fifty-four ($1,854) dollars; lot number two (No. 2) of

said place was sold to William Warnock and James Gaines for the price of one thousand and five & 12½-100 ($1,005.12½) dollars, and contained four hundred and sixty-five and one-half acres; and lot number three (No. 3) of said place was sold to Charles J. Miller for the sum of twenty-one hundred and eighty-eight & 90-100 dollars, containing three hundred and seventy-one acres, more or less, and to which last-named purchases titles were made by said F. A. Jones, ex'or, and duly recorded in record book F of deeds in the clerk's office of the Superior Court of Burke county; and your orator avers that the said George O. Warnock has paid the sum of one
10 thousand dollars on his said purchase, as your orator is informed, (but of which said payment he requires strict proof;) that the said William Warnock and James Gaines have paid nothing on the purchase of said lots of land, and that the said executor, Francis A. Jones, has never executed to said George O. and William Warnock and the said James Gaines any title deeds.

And your orator further avers that the said C. J. Miller has lately sold his part of said land to said Edward D. Boit, William A. McKenzie, and Robert A. Boit for the sum of dollars, who are now in possession of said lot No. 3 by regular deed recorded in record book G, p. , in the clerk's office of the Superior Court of Burke county.

Your orator further shows that up to the beginning of this present year the said F. A. Jones admitted that there was still something due to your orator from the estate of the said M. D. Jones, but that in April of this year said F. A. Jones wrote to your orator's guardian claiming that there was due to him, said F. A. Jones, executor, &c., the sum of two thousand dollars from your orator, and threatening to sell the land of your orator, situated in Burke county, to pay said alleged indebtedness of two thousand dollars. And your orator avers that there still is a large sum of money due to him from said F. A. Jones, executor of said M. D. Jones, your orator's former guardian.

11 The premises considered, your orator prays your honors not only for the writ or writs of injunction restraining the said defendants, their agents and assigns, from selling and conveying, or attempting to sell and convey said Gilstrap and Watson place or any other of the real estate of your orator or any part thereof, but also the writ or writs of subpœna to be issued out of your honorable court, directed to all and singular the defendants above named, commanding them and each of them upon a day certain, and under a penalty therein to be specified, that they be and appear before your honors, full, true, and perfect answer to make to all and singular the premises; and that upon the hearing of this cause your honors will decree the said titles of the said Charles J. Miller and of the said E. D. and R. A. Boit and Wm. A. McKenzie to be given up for cancellation as being a cloud upon your orator's title to said Gilstrap and Watson place; and that the said defendants be decreed to account to your orator for the rents, income, and profits of said place, and

that they, their heirs and assigns and lessees, be decreed to deliver up the possession of the whole of the Gilstrap and Watson place to your orator; and your orator also prays for such other and further relief, orders, judgments, and decrees as in the premises shall seem meet and equitable; and your orator will ever pray, &c.

HENRY B. TOMPKINS,
Solicitor for Complainant.

12 THE STATE OF ALABAMA, }
Bourbon county. }

Before me, the undersigned, personally came Henry C. Ward, who on oath says that the matters and things set forth in the above bill are true when spoken of his own knowledge, and that he believes them to be true when spoken upon information and belief.

HENRY C. HART.

Sworn to and subscribed before me this 6th day of October, 1874.

[SEAL.] WM. H. LOCKE,
Notary Public.

Exhibit "A."

STATE OF GEORGIA, }
Burke county. }

I, Drury Corker, of the county of Burke and state of Georgia, being of sound and disposing mind and memory, do make, publish, and declare this the following paper writing to be my last will and testament, hereby revoking all former wills and codicils heretofore made by me:

Item 1st.—I desire my executors hereinafter named to have my body interred in my family grave-yard in a decent and Christian-like manner, suitable to my circumstances and condition, and also to have tombstones erected over my grave and the other deceased members of my family.

Item 2d.—I desire my executors to settle up all my just debts, and also to settle with my wards and those estates that I may be the representative of as soon as possible, out of any notes and
13 monies that may be in hand at my death, and the crop of cotton of the then year, and also from the sales of my land lying out of the county of Burke, which is directed hereinafter to be sold by my executors.

Item 3d.—I give and bequeath to my trusty friend John W. Carswell and Malcom D. Jones in trust for the sole and separate use of my beloved wife, Sarah D. Corker, and her children born and to be born, free from the contracts, debts, or obligations of any future husband she may marry, the following slaves and the future increase of the female slaves, viz: Mary, known as Mary Clinton, together with my interest (by right of my intermarriage with my said wife) in the

negroes that have been recovered of the estate of Mary Churchill and under her will, and also the negroes in dispute in the hands of John S. Byne, executor of the last will and testament of the late Benjamin E. Gilstrap, known as the negroes to be set free under the will of the said Benjamin E.; also the mahogany furniture, bureau, marble-top table, the crockery-ware, the silver-ware, with her name marked thereon, all of which articles has been purchased for her since our intermarriage; also two beds, matrasses, bedsteads, and furniture complete, she to select the same; also my carriage and two carriage horses, the said property above specified in this clause or item of my said will being given to my said wife in lieu of
14 dower in all my real estate. And I desire my executors to allow my beloved wife to remain on my homestead plantation and work the negroes bequeathed for her benefit, as well as those she holds as a separate estate under the will of the late Benjamin E. Gilstrap during her lifetime or widowhood, in connection with the negro property hereinafter given to my beloved son, Ernest D. Corker, and to plant jointly and to be mutually supported off of the plantation, this privilege being in lieu of the annual support granted by the statute to the widow and minor children in such case made and provided. And should my beloved wife, Sarah D. Corker, in her election prefer dower and a year's support for herself and child, she is then to forfeit the foregoing property bequeathed for her benefit in this the third clause or item of my will; and I then give and bequeath and direct it to go and vest in my son, Ernest D. Corker.

Item 4.—I give and bequeath to my worthy friend, John W. Carswell, and my son-in-law, Henry C. Hart, in trust for the sole and separate use of my beloved daughter, Sarah C. Hart, and her children born and to be born, free from the debts, contracts or obligations of her present or any future husband, the following negro slaves, twenty-nine in number, and the future increase of said female slaves, viz.: Salem, Jonas, Arch, Andrew, Hillory, Isaac,
15 Harriet, Rilly, Ester, Caroline, Josephine, Harry, Clay, Cato, Venus, Rose and her two children, Emily and an infant, Hannah, Eliza, Jim, Wilson, Laura, Hetty, Patty, Joe, Tom, Louisa and Edna; also the plantation known as the Gilstrap and Watson place, containing about twelve hundred acres, to be separated or divided from my homestead place by a north and south line as near as practicable, commencing at the crab-apple corner, standing about half-way within where Mrs. Hall formerly lived, and the corner of the fence next to the mill; also my gold spectacles and case; also the bed, matrass and bedstead and furniture, piano forte and gold watch, now in possession of my said daughter; and if the said Henry C. Hart does not wish to settle the plantation herein given in this clause of my will for the benefit of him and my said daughter, the trustees of my said daughter are hereby authorized to sell the plantation above specified, either at public or private sale, without any order or decree of the court for that purpose, and invest the proceeds in other lands near Eufaula, or at such other place as the said Henry

C. and Sarah C. Hart may select, and the land so purchased to be subject to the same trusts, limitations and conditions as the other property specified in this clause of my will.

Item 5.—I devise and bequeath to my beloved son, Ernest D. Corker, the following negro slaves, twenty-four in number, and the future increase of said female slaves, viz.: Peter, Billy, Julia,
16 Augustus, Ciclia, Western, Jane, Calvin, Abraham, Ira, Allen, Judy, Mary, Wash, Lucy, Rufus, Fanny, James, Lucinder, Mosell, Ellafare, Will, Nelly and her child Billy; also my homestead plantation, containing about twelve hundred and fifty-six and three-quarter acres, to be separated and divided by the north and south line specified in the fourth item of this my will; also five shares of the capital stock in the Augusta and Savannah Railroad, and all the interest and dividend on said stock declared and to be declared. If my said son Ernest D. should die during his minority without lawful children surviving him, I then give and bequeath all the property in this clause of my will, except the negroes Lucy, Nelly, and her child Bell to my said daughter Sarah C. Hart, to be subject to the same trusts, limitations, and conditions as all the property given her in this my will, and the negroes Lucy, Nelly, and her child Bell I then give and bequeath to my beloved wife, Sarah D. Corker, subject also to the same trusts, limitations, and conditions as all the other property given her in this my will.

Item 6th.—I desire one thousand dollars to be paid by my executors to the trustees of my beloved wife before nominated for her benefit, which is to be likewise in lieu of her twelve months' support.

Item 7th.—I desire my executors to sell my lands lying
17 out of the county of Burke, either at private or public sale without any order of court, as they may think best in their discretion; also to sell all my perishable property of every description, corn, fodder, mules, horses, stock, plantation tools, household and kitchen furniture, except such articles as those that have already been bequeathed in this my will, and after the payments of my debts, legacies, I desire the remainder of the proceeds of said sales, and also all monies, notes, and other assets, real or personal, not otherwise disposed of, to be equally divided between my son Ernest D. Corker and Sarah C. Hart, and the monied assets going to Sarah C. Hart I desire her trustees to invest it in negroes, or such other property as they may think best, for the benefit of her and her children, subject to the same trusts, limitations, and conditions as all the property given her in this my will.

Item 8.—I desire, should my beloved wife die during the tender years of my beloved son, that his guardian hereafter appointed should place him in the charge of my beloved daughter for nurture and protection.

Item 9.—I desire two acres laid off containing my family graveyard, letting the present interments be in the center of the same, and that the shape of the same be as nearly as possible a square; and I reserve the same for all time to come from bargain and sale

18 by any of me legatees in this my will, or of any of their heirs or assigns.

Item 10.—I desire the guardian of my son, at the sale of my perishable property, to purchase such property in the *in the* way of mules and provisions, plantation tools, &c., as may be necessary to work the negroes given him in this my will.

Item 11.—I desire my executors to distribute my estate the first day of January next after my death.

Lastly, I hereby appoint my son-in-law, Henry C. Hart, and John W. Carswell, trustees of the property bequeathed to my daughter, Sarah C. Hart, and her children born and to be born; and I appoint Jonn W. Carswell and Malcom D. Jones trustees of the property bequeathed to my beloved wife, Sarah D. Corker; and I appoint Malcom D. Jones guardian of the person and property of my son, Ernest D. Corker; and I also appoint John W. Carswell, Malcom D. Jones, and my son-in-law, Henry C. Hart, executors of this my last will and testament.

In testimony whereof I have hereunto set my hand and seal this December 3rd, 1858.

DRURY CORKER.

Signed, sealed, published, and declared in presence of—(one half sheet cut off before execution on the signing by testator)—

JABEZ B. BAXLEY.
THOMAS JONES.
STEPHEN A. CORKER.

19 STATE OF GEORGIA, }
Burke county. }

I, Stephen A. Corker, ordinary in and for said county, do certify the foregoing eight sheets to contain a true exemplification of the last will and testament of Drury Corker, deceased, as appears of file and record of this office.

In testimony whereof, I have hereunto set my hand and official signature and seal of this office this eight day of March, eighteen hundred and fifty-nine.

[SEAL.] STEPHEN A. CORKER,
Ordinary B. C.

(Endorsement:) Copy will of Drury Corker.

"*Exhibit B.*"

THURSDAY MORNING, *Dec. 19th*, 1867.

GEORGIA, }
Burke county. }

The honorable Superior Court met pursuant to adjournment.

Present: His honor, William Gibson, judge.

ERNEST D. CORKER, by next friend,
vs.
M. D. JONES. } Tried by special jury.

The jury find that it is to the interest of Ernest D. Corker, the minor, under his circumstances, that said purchase be rescinded and deed be cancelled and set aside as to said Ernest D., leaving
20 it to stand as against the makers and in favor of said Malcom D. individually; and that if necessary said Ernest D. make and deliver a proper conveyance of said land to said Malcom D.

WILLOUGHBY BARTON,
Foreman.

The court then adjourned until the day of January, 1868.

WM. GIBSON,
Judge Sup'r Ct. M. Dist.

EDGAR S. GARLICK,
Clerk.

TUESDAY MORNING, *Nov. 24th*, 1868.

GEORGIA,
Burke County.

The honorable the Sup'r Court met pursuant to adjournment.

Present: His honor, William Gibson.

Bill for Dis. & Rel., &c.

ERNEST D. CORKER, minor, by SARAH D. CORKER, his mother and next friend,
vs.
MALCOM D. JONES.

Whereas the jury have found that it is to the advantage of said Ernest D. Corker, minor, and complainant, that the purchase for him in deed described in said bill to said Malcom D., as his
21 guardian, be rescinded and set aside, leaving said deed to stand in favor of said Malcom individually, and set aside an cancelled as to said Ernest D., and that said Ernest D. make conveyance to said Malcom, if necessary, of said land described in said bill. It is ordered and decreed that said deed be and is hereby set aside and cancelled as to said Ernest D. only, and that it stand good against the makers thereof, and for the use and benefit of said Malcom D. individually, and said Ernest D. make any, all necessary, and proper conveyance of the land referred to said Malcom D.; that said Malcom D. do pay the one-half of the costs of this proceedings, and said Ernest D. the other half thereof.

Jan'y 1, 1868.

WM. GIBSON,
Judge Superior Court M. Dist., Geo.

GEORGIA, }
Burke county. }

I, Seaborn J. Bell, clerk of the Superior Court of said county, do hereby certify that the above and foregoing two pages and fractional part of the third of writing is a true and correct transcript from the record of the minutes of said Superior Court, and that there is no other or further order, judgment, or decree upon said records of or concerning said cause of Ernest D. Corker, by next friend, *vs.* M. D. Jones.

22 Given under my hand and official seal of office this 17th day of August, eighteen hundred and seventy-four.

[SEAL.] S. J. BELL,
C. S. C.

[Endorsement:] In equity, fifth circuit court of the United States for so. dist. of Ga.; Ernest D. Corker, by next friend, compl't, and Francis A. Jones, ex'or, &c., et al.; def'ts bill for inj. and relief; original bill filed Oct. 14, 1874; Jas. McPherson, clerk; Henry B. Tompkins, sol. for compl'nts. N. B.—The clerk will please issue and the marshal serve subpœnas upon all the defendants except E. D. Boit, R. A. Boit, and Wm. A. McKenzie. Savannah, 14 October, 1874; Henry B. Tompkins, sol. for compl'nts.

Subpœna in Equity.

United States of America, southern district of Georgia.

ERNEST D. CORKER, (minor,) by HENRY C. HART, his next friend and guardian, complainant,
and
FRANCIS A. JONES, ex'r of MALCOM D JONES, dec'd, GEORGE O. WARNOCK, et al., defendants. } In Equity.

23 The President of the United States of America to Francis A. Jones, exo'r of Malcom D. Jones, dec'd, George O. Warnock, William Warnock, James Gaines, Charles J. Miller, Edward D. Boit, Robert A. Boit, and William A. McKenzie, late copartner with E. D. and R. A. Boit under firm name of Boit & McKenzie, greeting:

For certain causes offered before the judges of the Circuit Court of the United States for the southern district of Georgia, in equity, you and every one of you are hereby commanded and strictly enjoined that, laying all other matters aside, and notwithstanding any other excuse, you personally be and appear at the clerk's office of the said court, in the city of Savannah, at Rules to be had on the first Monday in December next, to answer to those things which shall then and there be objected to you in a bill for injunction and relief filed by the said complainant, and to do further and receive what the said court shall have considered in that behalf; and this you may in

nowise omit under penalty of five hundred dollars; and have you this writ.

Witness the Honorable Morrison R. Waite, chief justice of the Supreme Court of the United States, this 11th day of October, in the year of our Lord one thousand eight hundred and seventy-four.

[SEAL.] JAS. McPHERSON, *Clerk.*

24 *Memorandum.*—The defendants are to enter their appearance in the suit above stated, in the clerk's office, on or before the day at which this writ of subpœna is returnable; otherwise the bill may be taken pro professo.

H. B. TOMPKINS,
Solicitor for Complainant.

(Endorsement:) In the Circuit Court of the United States for the southern district of Georgia, December Rules, 1874; Ernest D. Corker, (minor,) by his next friend and guardian, complainant, and Francis A. Jones, exo'r, et al., defendants; in equity; original supbœna in equity; filed 14th day of October, A. D. 1874; Jas. McPherson, clerk; H. B. Tompkins, complainant's solicitor; returned served Oct. 27, 1874.

Marshal's Return.

I have this 21st day of October, 1874, served a copy of the within writ of subpœna upon Charles J. Miller, by leaving the same at his residence (in hand of his father) at Savannah, Ga. The return of W. H. Smythe, U. S. marshal, by C. P. Freeman, deputy.—I have this 22 day of October, 1874, served a copy of the within writ of subpœna on Francis A. Jones personally, and upon James Gaines, Geo. O. Warnock, and William Warnock personally, Oct. 24, 1874, at Burke county, state of Georgia. The return of William H. Smythe, U. S. marshal, by J. C. Blance, deputy.

25 *Decree pro confesso* vs. *F. A. Jones, ex'or, G. O. Warnock, W. Warnock, J. Graves & C. J. Miller.*

ERNEST D. CORKER, by next friend, complainant,
and
FRANCIS A. JONES, ex'or, et al., def'ts. } In Equity.

The subpœna in this cause having been duly served on Francis A. Jones, ex'or of will Malcom D. Jones, George O. Warnock, William Warnock, James Gaives and Charles J. Miller, defendants, and they having failed to answer in terms of the rules of court, on motion of solicitors for complainants it is ordered that the said complainant's bill of complaint be taken *pro confesso* and that the cause proceed to decree.

H. B. TOMPKINS,
T. M. NORWOOD,
Sol's for Compl't.

Dec. 7th, 1874.

(Endorsement:) U. S. Cir. Court, so. dist. of Ga., Dec. Rules, 1874; Ernest D. Corker, by next friend, *v.* Francis A. Jones, ex'or, et al. Decree pro confesso *vs.* F. A. Jones, ex'or, G. O. Warnock, W. Warnock, J. Gaives, &c., and C. J. Miller. Filed Dec. Rules, 1874; Jas. McPherson, clerk; Tompkins—Norwood.

26 *Appearance for Defendants.*

In the fifth circuit of the United States for the so. dist. of Ga.

ERNEST D. CORKER, by next friend, compl't,
and
FRANCIS A. JONES, ex'r, &c., et al., defts. } In Equity.

The default in above case being opened by consent, we do hereby enter this our appearance for defendants, and will file answer as per terms of consent by the Rules day in February next.

January Rules, 1875.

R. R. RICHARDS,
J. V. RYALS,
WM. WARNOCK,
Solicitor for Defendants.

(Endorsement:) U. S. circuit court, so. dist. of Georgia. In equity. E. A. Corker, by his next friend, &c., *vs.* F. A. Jones, ex'r., &c., et al. Appearance for defendants. Filed and entered Jan'y 4, 1875. Jas. McPherson, clerk; R. R. Richards, J. V. Ryals, sol. for def'ts.

27 *Agreement of Counsel to open default and enlarge time for Answer.*

Fifth Circuit Court of the United States for the so. dist. of Ga.

ERNEST D. CORKER, by next friend, complainant,
and
FRANCIS A. JONES, &c., exr., et al., defendants. } In Equity.

The above named defendants having failed to appear in said case on or before the last December rules, being the time at which by law an appearance should have been entered; and in consequence of such failure the bill was taken pro confesso: Now, inasmuch as I am satisfied that it was the intention of defendants to appear and defend said suit, and they did not do so in time through inadvertence, the subpœnas being lost by them, and they having informed their solicitors that the rules day was the 1st Monday in January, 1875, I do, therefore, consent and agree that said solicitors may enter an appearance for defendants on the rules day in January, 1875, and have until the rules day in February, 1875, to demur, plead, or answer, or make such defence as they may have to said suit,

and hereby agree to the setting aside of said decree pro confesso.

28 HENRY B. TOMPKINS,
T. M. NORWOOD,
Sol's for Compla'ts.

Sav., Jan'y 4th, 1875.

(Endorsement:) In equity; in the fifth circuit court of the United States for the southern dist. of Georgia; Ernest D. Corker, by next friend, complainant, and Francis A. Jones, ex'or, &c., et al., def'ts; agreement of counsel to open default and enlarging time for answer. Filed Jan'y 4, 1875; Jas. McPherson, clerk.

Answer of Francis A. Jones, ex'or.

In the 5th Circuit Court of the United States for the southern district of Ga.

ERNEST D. CORKER, by his next friend, complainant,
and
FRANCES A. JONES, executor, et al., defendants. } In Equity.

The answer of Frances A. Jones, executor, and this defendant, now at all times saving and reserving unto himself all benefits and advantages of exceptions which can or may be had or taken to the many imperfections in the said complainant's said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised and believes is or are material or necessary for him to make answer unto, answering, says:

29 That he does not know who qualified under the will of the said Drury Corker as executor or executors, or whether the said Malcom D. Jones was the only one who entered upon his duties as executor, and prays as to these matters that strict proof may be required of said complainant. And this defendant, further answering, says he knows not whether under the last clause of said will of said Drury Corker said Malcom D. Jones was made guardian of the person and property of said complainant, and entered upon said duties of said guardianship, or how or by what authority he came to act as such guardian; neither does he know any of the facts in regard to the will of the said Drury Corker, and the portions left to the respective members of his family, or what became of the property so left them, as stated in said bill of complainant; neither does he know when or where Henry C. Hart qualified as guardian of complainant, but certain papers have been shown him purporting to be letters of guardianship granted to said Henry C. Hart, of the legality of which, however, he prays the court to require said complainant to show proof. This defendant further says that he knows not whether said Malcom D. Jones, as executor of said Drury Corker, made returns to the court of ordinary or not, or was indebted as such executor to said estate, or ever settled with said Sarah C.

Hart, or ever had in hand the five shares of stock as in said bill of complaint alleged; and of all these matters he requires strict proof, believing and being informed that said Malcom D. Jones was not indebted in one cent to said estate, and as to said five shares of stock, knowing that no such property was found among the assets of said Malcom D. Jones and having been unable to trace to
30 his possession any such stock. This defendant, further answering, says: That he knows not whether said Malcom D. Jones, as guardian of said complainant, failed to make his returns since 1863 to the ordinary of Burke county, as alleged in said bill, but if it be true that he did not make such returns for the year 1864, he was prevented from so doing by reasons of the late war between the North and South and the presence of the Federal troops in said county under General Sherman, and to the best of this defendant's information, knowledge, and belief the returns made by said Malcom D. Jones for the year 1863, by which complainant was shown to be indebted to said Malcom D. Jones in the sum of $14,962.98, were complete, accurate, and true, and he expressly denies any charges to the contrary made in the complainant's bill of complaint.

This defendant, further answering, says that to the best of his information, knowledge, and belief said Malcom D. Jones in purchasing said Gilstrop & Watson place advanced bona fide out of his individual means the sum of fifteen thousand six hundred dollars to pay for said place, such amount being over and beyond any indebtedness to said complainant as guardian or otherwise, and any and all allegations to the contrary in said bill of complainant this defendant expressly denies, and this defendant also denies that the said Malcom D. Jones ever promised and undertook to re-emburse himself for said advance out of one hundred & thirty-four bales of cotton mentioned in complainant's bill, or ever took the same in payment or was guilty of any negligence in failing to sell or dispose of the same or in allowing it to remain on complainant's place until destroyed by the Federal troops in the year 1864. On the contrary, this defendant says that in 1863 & '4 he was put in charge of said cotton by said Malcom D. Jones as guardian of complainant, said Mal-
31 com D. Jones being disabled at the time from looking after the same individually. That to the best of this defendant's recollection he so took charge of a greater number of bales of cotton than is mentioned in said bill of complaint, but he is sure that the cotton until the time of its destruction was kept separate and distinct as being the property of complainant from the other cotton kept by him for said Malcom D. Jones. That the said Malcom D. Jones took the same care of said cotton as he did of his own, and was a prudent man who took good care of his own business. That said Malcom D. Jones had six hundred bales of his own cotton destroyed by the Federal forces at the same time of the destruction of complainant's. That during these years—in fact during the late war—it was not considered wise to dispose of the cotton for the then

Confederate currency of the South; such money was very plentiful, and was the only money for which said cotton could have been sold, and in so keeping complainant's said cotton said Malcom D. Jones acted for the best interest of complainants at the time—(what was the interest of the complainant at the time in the opinion of every one)—no one foreseeing that the Federal troops would advance into Burke county. And this defendant says there was no available means to remove said cotton at the time to prevent its destruction. And this defendant, further answering, says that he knows nothing of and does not believe that there ever was any collusion between the said Malcom D. Jones and the mother of complainant with regard to the proceeding in equity by which the titles to said Gilstrop & Watson place was vested in said Malcom D. Jones, but, on the contrary, this defendant says he believes and has been informed that there was no such collusion, and that said proceeding in equity was fairly and squarely conducted and
32 regular in every particular, and this defendant denies all fraud and allegations thereof in complainant's bill, and says the finding of the jury in said equity proceedings and the decree of the court were binding upon complainant. This defendant, further answering, says that it is true that George O. Warnock purchased lot number one of said lands for the sum of $1,854 *dollars;* that he paid one thousand dollars cost of said purchase-money, and that no title deeds have been yet executed to him, but he denies that no title deeds have been made by him of lot number two to William Warnock and James Gain, and that they have not paid therefor. On the contrary, he says they did pay the purchase-money for said lot and received titles from him. This defendant also denies that he ever admitted at any time, and particularly at the time mentioned in complainant's bill, that there was anything due to complainant from the estate of M. D. Jones; on the contrary, the fact is, and always so stated by him, that between two and three thousand dollars is due by complainant to him as executor of said Malcom D. Jones. And this defendant further says, that upon the death of Malcom D. Jones he took possession of said Gilstrop and Watson place as the property of said Malcom D., and that no claim was made thereto by said complainant or his said guardian or any one on his behalf, or any notice given in any way of any intention on the part of complainant to claim any interest in said place, and in pursuance of his duties as executor in winding up the estate of said Malcom D. Jones, which was insolvent, he sold said Gilstrop and Watson place by an
33 order of the Superior Court of Berke county, Georgia, in equity, made on the eight day of July, 1873, to the parties mentioned in complainant's bill of complaint, who were innocent and bona fide purchasers without notice for valuable consideration, at public outcry on a regular sale day, before the court-house door of Burke county at sheriff sale, and defendant annexes hereto a copy of said decree marked Exhibit "A," and prays that the same may be taken as a part of this his answer. And this defendant submits to this

honorable court that by the laws of Georgia the said complainant is bound by the statute of limitation from having or maintaining his aforesaid bill of complaint against him, and he therefore prays that said bill may be dismissed with costs against said complainant.

And this defendant further submits to this honorable court, that the decree in equity set forth in complainant's bill, whereby the title to said Gilstrop and Watson place were vested in said Malcom D. Jones, is binding upon complainant, and cannot be attacked by him collaterally, as done by him in said bill of complaint, and can only be set aside by a proceeding in the court wherever instituted for that purpose.

And this defendant denies every matter, cause, or thing in said complainant's said bill of complaint contained not hereinbefore confessed and admitted, and he humbly prays to be hence dismissed with his reasonable cost and charges in their behalf most wrongly sustained.

J. V. RYALS,
R. R. RICHARDS,
and W. WARNOCK,
Sols. for Defendant.

34 You, Frances A. Jones, do swear that what is contained in your answer, so far as concerns your own acts and deed, is true of your own knowledge, and what relates to the act or deed of any other person you believe to be true.

F. A. JONES, *Ex'or.*
M. D. JONES.

Sworn to & subscribed this 7th day of Jan'y, 1875, in presence of—

S. ELSINGER,
Not. Pub. C. C., Ga.

Exhibit A.

GEORGIA,
Burke County.

TUESDAY MORNING, *July 8th*, 1873.

The honorable Superior Court met this day pursuant to adjournment. Present: his Honor, William Gibson, judge.

VIRGINIA L. JONES et al.
vs.
FRANCIS A. JONES, extr. M. D. JONES, et al.

On motion of executor, by consent of parties, it is ordered the said executor F. A. Jones be authorized to employ a surveyor under the direction of John J. Jones, William A. Montgomery, John T. Shewmake, and Stephen A. Corker, as commissioners, to divide various tracts of land belonging to said estate of Malcom D. Jones, dec.,

into such parts and parcels as will be most advantages in their judgment to effect the best possible sales thereof; that the said executor, under the direction of said commissioners, after and advertisement of forty days in the paper in the town of Waynesborough, one in the city of Augusta, and one in Savannah, besides publication by hand-
35 bills if it should be deemed necessary to give to such further notice, after the several parcels of land lying as well in the county of Jefferson as Burke, so divided into smaller lots as aforesaid for sale, the terms to be cash, on the first Tuesday in October next (1873,) within legal hour of sale, at public outcry, before the court-house door in the town of Waynesborough, or at such other time as the said commissioner may agree upon and appoint, there the said sale shall continue from day to day, if necessary, until all of the said lots or parcels are sold, and that the said sale shall be absolute and without restraint. The proceeds of said sale, it is ordered, shall be received by two of said commissioners, to wit, John J. Jones and Stephen A. Corker, to be deposited in the bank of the Georgia R. R. & Banking Co., in the city of Augusta, till drawn out by the said commissioners, or the survi'or of them, as the court may by its order direct, and that all balance of money in the hands said executor, belonging to said estate, or that may be received by him, shall also be paid unto the said two commissioners to be deposited and drawn out in like manner as the proceeds of the said sale of land. Further, that possession of the said land purchased at said sale shall be given not until the first day of January, 1874, and no tenants in possession for the year 1873 shall be disturbed or molested before that time by any purchaser thereof; and that the rent, issues, and profits shall be received for the present year to the estate of said M. D. Jones,
36 and that all the fi. fas. now proceeding or that may hereafter be issued and proceeded against the said land of said estate be and are hereby enjoined until the further order of this court; and it is further ordered that amount allowed to Messrs. Corker and Dixon, attorneys at law, for service to said estate, to wit, the sum of $1,058.80, to rank with other sums for service allowed attorneys for the estate aforesaid as administration expenses.

WILLIAM GIBSON,
Judge Superior Court.

(Endorsement:) In equity, in the Fifth Circuit Court of the United States for the so. district of Ga.: Ernest D. Corker, by next friend, compl't, and Francis A. Jones, ex'or, et al., defendant. The answer of Francis A. Jones, ex'or. Filed Feb'y 1, 1875. Jas. McPherson, clerk. J. V. Ryals, R. R. Richards, W. Warnock, sols. for defendants.

37 *Answer of George O. Warnock, William Warnock, James Gaines, and C. J. Miller.*

In the 5th Circuit Court of the United States for the southern district of Georgia.

ERNEST D. CORKER, by next friend, complainant,
and
FRANCIS A. JONES, executor, &c., et al, defendants. } In Equity.

The answer of George O. Warnock, William Warnock, James Gaines, and Charles J. Miller.

These defendants, now and at all times hereafter saving and reserving unto themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and imperfections in the said complainant's said bill of complainant contained, for answer thereunto, or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them to make answer. These defendants, answering, say that they have never heard or been informed, save by complainant's bill, as to what were the respective rights of the family under the will of their father, Drury Corker, as stated in said bill of complaint, but that they believe such facts to be true, as in said bill stated.

And all of these defendants believe, and are willing to ad-
38 mit as true, that under the last clause of the will of Drury Corker said Malcom D. Jones was made guardian and trustee of the property of said complainant, and that John W. Carswell and Henry C. Hart were made trustees in said will of the property bequeathed to Sarah C. Hart, and that the tracts of land known as the Gilstrap and Watson place was sold by said trustees of Sarah C. Hart on or about the 24th day of July, 1863, in compliance with the power by said will conferred upon them, but they deny that the price paid for said land was eighteen thousand dollars, and that the title deeds were made to complainant; but they say, on the contrary, that the purchase-money paid to the best of their belief and information was the sum of fourteen thousand dollars in Confederate money, and that the title deeds to said land were made to Malcom D. Jones, trustee of Ernest D. Corker, instead of directly to said Ernest D.

And these defendants further say that they know nothing save from hearsay, and that only since the filing of said bill of complaint, as to the state of the account between the estate of said Malcom D. Jones and said complainant; that they know not whether the estate of said Malcom D. Jones is indebted to said complainant, or whether said complainant is indebted to the estate of said Malcom D. Jones; nor do they know anything of the alleged frauds said to have been committed upon said complainant by the said Malcom D., or
39 upon complainant's property; and, further, that they do not know whether said Malcom D. Jones was guilty of any breach of trust, or whether he managed said trust estate, or whether he managed said trust estate well and to the best advantage; and, in fine, these defendants say they were until the filing of said bill of

complaint, ignorant of the facts that said Malcom D. was the trustee of said estate, or had ever been the trustee of said complainant for said Gilstrap and Watson place; and that they have never had any reason to believe, nor had they ever believed, nor do they now believe, that there ever was any collusion between the said Malcom D. and the mother of said complainant with regard to the proceeding in equity by which the titles of said Gilstrap and Watson place were vested in said Malcom D. Jones; but, on the contrary, said defendants say they believe there was no such collusion, and that said proceedings in equity were fairly and squarely conducted, and that the purchase-money for said land was paid by said Malcom D. Jones individually, being advanced by him for the benefit of said complainant, and that such advancement was for the interest of said complainant and his said property, so likewise said proceedings to relieve said complainant of the liability of said purchase-money, and that all the facts stated and findings of the jury and court in said pro-
40 ceedings were true in every particular; and said defendants further believe that said Ernest D. Corker, at the time of said purchase, and also at the time of said equity proceedings, was indebted to said Malcom D. Jones, and is now so indebted.

And this defendant, George O. Warnock, says it is true that he purchased lot number one of said land for the sum of eighteen hundred and fifty dollars, and that he paid one thousand dollars cash of said purchase-money, and that no title deeds have ever been executed to him; but the reason of this is that he failed to pay the balance of said purchase-money, which said failure was occasioned by and on account of being notified by Henry B. Tompkins, esq., solicitor for said complainant, that he intended to bring suit in behalf of said complainant for the recovery of said land, but that he is ready and hath ever been to pay said balance of said purchase-money, to wit, the sum of eight hundred and fifty-four dollars, upon the execution and delivery to him of title deeds by the parties whom your honorable court shall adjudge to be the rightful and legal owner of said land with authority to convey.

And these defendants, William Warnock and James Gaines, further answering, say that they did purchase lot number two of said Gilstrap and Watson place for the sum of one thousand and five dollars & 12½ cents, and they say the titles have been duly executed and delivered, and were so delivered at or about the time of said purchase. They say that titles to ninety-seven acres of said lot number two were made to the said William Warnock, and the titles to the residue of said lot number two was made to C. A. Rowland, of Augusta, Georgia, for the benefit of said Gaines, the purchase-money for said residue of said lot No. two, and taking the title in his name for the protection of himself until the repayment of said advance money, the said Rowland giving the said Gaines bond for title when said advance should be paid, and said purchase-money for said lot number two was paid by said William Warnock and James Gaines to said Francis A. Jones, executor.

And all and every of these defendants, George O. Warnock, Wil-

liam Warnock, James Gaines, and Charles J. Miller, say they were innocent bona fide purchasers of said property for valuable consideration paid by them without notice of any kind, character, or description, either actual or constructive, that said complainant had or claimed any interest therein, or that said Malcom D. Jones or said Francis A. Jones, executor, have ever been trustee therefor.

That they purchased said land believing that said Francis A. Jones, executor of said Malcom D., had full power and
42 authority to sell and upon his representation that he was the absolute owner thereof.

And said defendants allege that said property was sold by an order of the Superior Court of Burke county, Georgia, under and by virtue of a decree in equity made on the eighth day of July, 1873. And after being duly advertised as provided in said decree, forty days in the paper in the town of Waynesborough, in one newspaper in the city of Augusta and one in the city of Savannah, besides publication by hand-bills, was sold at public outcry on a sale day by the sheriff of Burke county, and before the court-house door, and knocked off as the property of Francis A. Jones, executor of Malcom D. Jones, no objection being made by any one.

And these defendants believe that said complainant and his next friend and guardian knew at the time that said sale was going to take place in said manner, and these defendants annex hereto a copy of said decree, which they pray may be taken as a part of this their answer, marked "Exhibit A."

And these defendants, further answering, say that the Superior Court of Burke county had full jurisdiction and authority to make the decree set forth in complainant's bill, whereby the title in said Gilstrap and Watson place was decreed to be in said Malcom D. Jones individually, and they say said decree was fairly and regularly obtained so as they know and believe, and they submit that
43 even if there was collusion and fraud then said titles to said land ought not to be effected thereby.

And these defendants submit to this honorable court that all and every of the matters in said bill complained of are matters which may be tried and determined at law by an action of ejectment, and with respect to which the said complainant is not entitled to relief in equity. These defendants hope they may have the same benefit of this defence as if they had demurred to complainant's bill.

And these defendants say all other matters or things in said bill contained, not hereinbefore well and sufficiently answered, &c., to be true to the knowledge or belief of these defendants.

And they humbly pray that they may be hence dismissed with their reasonable costs and charges in this behalf, now wrongfully sustained.

WILLIAM WORNACK,
Att'y for Self.
J. V. RYALS &
R. R. RICHARDS,
Sol. for Defendants.

Sworn to and subscribed before me this 31st day of Dec., 1874.
JOHN H. PERKINS, *J. P.*

WILLIAM WORNACK.
JAMES GAINES.
GEO. O. WORNACK.
CHARLES J. MILLER.

W. O. PRICE, JR.,
Not. Pub. C. C., Ga.,
Witness signature of C. J. Miller.

44 "*Exhibit A.*"

TUESDAY MORNING, *July 8th*, 1873.

GEORGIA,
Burke county.

The honorable Superior Court met this day pursuant to adjournment.

Present: His Honor, William Gibson, judge.

Bill, &c.

VIRGINIA L. JONES et al.
vs.
FRANCIS A. JONES, extr. M. D. JONES, et al.

On motion of executor, by consent by parties, it is ordered: The said executor, F. A. Jones, be authorized to employ a surveyor, under the directions of John T. Shewmake and Stephen A. Corker, as commissioners, to divide the various tracts of land belonging to said estate of Malcomb D. Jones, deceased, into such parts and parcels as will be most advantageous, in their judgment, to effect the best possible sales thereof; that the said executor, under the direction of said commissioners, after an advertisement of forty days in the paper in the town of Waynesboro', one in the city of Augusta, and one in Savannah, besides publication by hand-bills if it should be deemed necessary to give to such further notice, after the several parcels of land, lying as well in the county of Jefferson as Burke, so divided into smaller lots as aforesaid for sale, the terms to be cash, on the first Tuesday in October next (1873), within legal hours of sale, at public outcry, before the court-house door in the town of Waynesboro', or at such other time as the said commissioners
45 may agree upon and appoint; that the said sales shall continue from day to day if necessary until all of the said lots or parcels are sold, and that the said sales shall be absolute and without restraint. The proceeds of said sales, it is ordered, shall be received by two of said commissioners, to wit, John J. Jones and Stephen A. Corker, to be deposited in the Bank of the Georgia Railroad Banking Company in the city of Augusta, to be drawn out by the said

commissioners or their survivors of them as the court may by its order direct, and that all balance of money in the hands of said executor belonging to said estate, or that may be received by him, shall also be paid unto the said two commissioners, to be deposited and drawn out in like manner as the proceeds of the said sales of land. Further, that possession of the said land purchased at said sales shall be given not until the first day of January, 1874, and that no tenants in possession for the year 1873 shall be disturbed or molested before that time by any purchaser thereof, and that the rents, issues, and profits shall be reserved for the present year to the estate of said M. D. Jones, and that all the fi. fas. now proceeding or that may hereafter be issued and proceed against the said land of said estate be, and are hereby, injoined until the further order of this court; and it is further ordered that amount allowed to Messrs. Corker & Dixon, att'ys at law, for services to said estate, to wit, the sum of $1,058.80, to rank with other sums for services allowed att'ys
46 for the estate aforesaid as administration expenses.

WILLIAM GIBSON,
Judge Superior Court.

(Endorsement:) In equity; in the fifth Circuit Court of the United States for so. district of Georgia; Earnest D. Corker, by next friend, comp'l't, and Francis A. Jones, ex'tor, et al., defendant; answer of George O. Warnock, William Warnock, James Gains, & C. I. Miller. Filed Feb'y 1st, 1875. Jas. McPherson, clerk; Wm. Warnock, I. V. Ryals, R. R. Richards.

Replication, &c., to Def't's Answer.

In the Fifth Circuit Court of the U. S. A. for the southern district of Ga.

EARNEST D. CORKER, by his guardian & next friend, HENRY C. HART,
vs.
FRANCIS A. JONES, ex., et al. } In Equity.

The replication of complainant to the answers of Frances A. Jones, executor of the estate of Malcolm D. Jones, and of George O. Warnock, Wm. Warnock, James Gains, and Charles J. Miller. This replaint, Earnest D. Corker, minor, by his guardian and next friend, Henry C. Hart, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answers of the said defend-
47 ants are uncertain, untrue, and unsufficient to be replied unto by this replicant; without this: that any other matter or thing whatsoever in the said answers contained, material or effectual in the law to be replied unto, confessed and avoided, aversed or

denied, is true; all which matters and things this replicant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

A. P. & S. B. ADAMS,
Repliant's Solicitors.

(Endorsement:) In 5th Circuit Court U. S., southern district of Ga., November term, 1876; Ernest D. Corker, minor, by his next friend & guardian, *vs.* Francis A. Jones, ex., et al.; in equity; replication, &c.; deft's answer; filed Dec. 30, 1876; Jas. McPherson, clerk; A. P. & S. B. Adams, compl't's & sol'rs.

Precept for Appearance and Order Thereon.

SAVANNAH, GA., *Nov. 22d*, 1878.

W. P. WARD, esq., clerk U. S. Court.

DEAR SIR: You will please enter our appearance for the defendants in the case of Earnest D. Corker, by next friend, comp't, and Francis A. Jones, et al., deft's, now pending in the U. S. Circuit Court, equity.

Yours very truly,
MACKALL & ERWIN.

48 *Equity Order for Appearance.*

United States Cir. Court, southern district of Georgia.

ERNEST D. CORKER, by next friend, complainant,
and
FRANCIS A. JONES et al., defendants. } In Equity.

On filing precept in this cause, and on motion of Mess. Mackal & Erwin: Ordered, That their appearance as solicitors for defendants in above cause herein be, and the same hereby is, entered, and that the cause be now docketed for said defendants.

Witness the Honorable Morris. R. Waite, chief justice of the Supreme Court of the United States, this 2d day of December, A. D. 1878.

[SEAL.] W. M. HEYWARD,
Deputy Clerk.

Notice.—If the defendant wishes to enter his appearance in the cause herewith served, it is suggested that he hand the subpœna and this blank to his attorney, who will fill it up and forward to the clerk. Solicitor will order copy of bill, if he wishes it, at same time.

(Endorsement:) U. S. Cir. Court, southern district of Georgia; December Rules, 1878; E. D. Corker, by next friend, complainant, and Francis A. Jones et al., defendants; precept for appearance

and order thereon; filed and entered this 2d day of December, 1878; W. M. Heywood, deputy clerk; Mackal and Erwin, solicitors for defendants.

49 *Order for Publication of Testimony.*

In Circuit Court of U. S. for so. dist. of Ga.

ERNEST D. CORKER, by guardian, &c., compla't,
and
F. A. JONES, ex'or, &c., et al., def'ts. } In Equity.

Upon motion of counsel for complainants, it is ordered that the testimony now in the clerk's office of the said court, by interrogations, may be opened and published. In open court, 15th April, 1879. Be it so.

JOHN ERSKINE,
U. S. Judge.

We consent to the above order.

R. R. RICHARDS,
MACKALL & ERWIN,
J. V. RYALS,
Sol'rs for Def'ts.

(Endorsement:) In U. S. Circuit C't for so dist. of Ga.; Corker *vs.* Jones et al.; equity; order for publication of testimony; filed April 18, 1879; W. P. Ward, clerk.

Consent Order that Cause may be Heard on Motion to Dismiss in Vacation.

In Circ't Court U. S. for so. dist. of Ga.

E. D. CORKER, by next friend, &c., compl't,
and
F. A. JONES, ex'or, &c., et al., def'ts. } In Equity.

50 It is considered, ordered, and decreed, the solicitors for complainant consenting, that the motion of defendants to dismiss the above cause for want of jurisdiction be heard and determined in vacation on the eight day of January, 1879, or as soon thereafter as it can be heard, and that all orders and decrees which the court may deem it proper to make upon the hearing of said motion may be made in vacation after the hearing of said motion, whether the decrees and orders be interlocutory or final.

We consent.

A. P. & S. B. ADAMS,
Solicitors for Compl'ts.

December 18, 1878.

(Endorsement:) In the U. S. Circ't Ct. for the southern district of Ga.; E. D. Corker, by next friend, &c., compl't, and F. A. Jones,

ex't'r, &c., te al., def'ts; in equity; consent order that cause may be heard on motion to dismiss in vacation.

Order Granting Complainant till June Rules to Amend his Bill without Prejudice.

In Fifth Circuit Court of U. S. for so. dist. of Ga.

ERNEST D. CORKER, by guardian, &c., compl'nt,
and
F. A. JONES et al., def'ts. } In Equity.

Upon motion of counsel for complainant and after argument on both sides, it is ordered that the bill in said cause be amend-
51 ed by complainant by the rules day in June next, without prejudice to either party, and that the cause do proceed.

In open court, 26 May, 1879.

JOHN ERSKINE,
Judge.

(Endorsement:) U. S. circuit court, so. dist. of Georgia. Ernest D. Corker, by guardian, &c., complainant, and F. A. Jones et al., def'ts. Order granting compl'nt till June rules to amend his bill without prejudice. Filed May 26, 1879; W. P. Ward, clerk.

Amendment to Original Bill.

In the Circuit Court of U. S. for southern dist. of Georgia.

ERNEST D. CORKER, by his guardian, &c., compl'nt,
and
FRANCIS A. JONES, ex'or, &c., et al, defts. } In Equity.

To the honorable judges of the said Circuit Court:

Humbly complaining, your orator, by leave of the court first obtained, comes and amends this his bill of complaint, in manner and form following: The said Ernest D. Corker avers and alleges that he is now of the age of twenty-one years, having become so during the year 1877, and that he is still a citizen of and residing in the state of Alabama. And the said Henry C. Hart was, that he
52 is now, as he was at the time of filing the original bill, still a citizen of and residing in the state of Alabama, and that his letters of guardianship over the person and property of the said Ernest D. Corker, have abated by reason of the coming of age of the said Ernest D., and that he, the said Henry C., has no longer any interest, pecuniary or otherwise, in the said cause set forth in the bill of complaint; and that it is proper and legal that said bill should henceforth proceed in the name of Ernest D. Corker alone; and that said bill and amendments *all* filed as well for the avoidance of a multiplicity of suits as because they set forth matters and things not cognizable by, and prays relief not to be obtained in a court of law.

Your orator further shows and represents unto your honors that the said defendant, F. A. Jones, ex'or, &c., is now, as he was at the date of the filing and service of the bill, a citizen of and residing in the said southern district of Georgia. That the said George O. Warnock, William Warnock, and James Gains, and Charles J. Miller are still citizens of and residing in the said southern district of Georgia, as they all were at the time of the filing and service of the original bill. That the said Edward D. Boit and Robt. A. Boit have

53 removed from the state of Georgia and are now, as your orator is informed and believes, citizens of and residing in the state of Massachusetts, and that William A. McKenzie is still a citizen of and residing in the state of Alabama. And that the said firm of Boit & Co. (composed of the two above named persons, E. D. & R. A. Boit) have been discharged from bankruptcy in the District Court of U. S. for southern dist. of Georgia, and that since the filing of the original bill in this case, and before any proceedings were had in the bankruptcy suit above alluded to, the said William A. McKenzie withdrew from the said firm, and it afterwards became and was known as Boit & Company, being composed of the said E. D. & R. A. Boit, thence on up to the time of the proceedings in bankruptcy, the assets of the said firm of Boit & McKenzie going to and belonging to Boit & Co. at the time of the said withdrawal of the said William A., and that the said Boit & Co., or either of them, did not and have not returned in any schedule of assets the said land in the original bill set forth, as conveyed to them by Charles J. Miller, and your orator is informed and believes that neither the said Wm. A. McKenzie nor the said Edward D. nor Robt. A. Boit, individually or as copartners, set up any claim or title to said land or any part thereof, but have relinquished and abandoned all and every right that they ever conceived they possessed in and to said property.

54 And your orator further shows and sets forth, by way of amendment, in addition to the averments made in the original bill, that the amount of $14,962.98 debeted to your orator by the returns of said M. D. Jones, as guardian, by his said returns up to 7 January, 1864, all accrued subsequent to 1 January, 1861, and by transactions in Confederate money, and that into said account they did not enter, as a credit to your orator, an indebtedness of said guardian of 1,332.28 dollars in good money, which was due your orator for transactions for the year 1860.

And your orator further shows that from the answer of the defendants it appears a part of the said Gilstrap & Watson place, alleged in the original bill as sold to George O. Warnock, was deeded by the said F. A. Jones, ex'or, &c., to one E. A. Rowland of the city of Augusta, and who is, as your orator avers, a citizen of and residing in the said southern district of Georgia, which said, deed as your orator believes, has not been recorded; and your orator had no means of knowing, and in fact did not know until informed by said answer of said Warnock, that said Rowland had or claimed title to any part or parcel of said land in dispute.

And your orator further shows that he has lately learned that on or about the month of Febrnary, 1877, the said C. A. Row-
55 land, under a deed to one S. W. Wynne of the county of Wilkes, in the said state of Georgia, and who is a citizen of and residing in the said county in the said state, of all his pretended interest in and title to such part of Gilstrap & Watson place as the said Rowland assumed to own and hold, and that said Wynne, on or about the 30th April, 1877, was given deeds and transfers of such part of said land so assumed to be owned by said Rowland, and that he, the said Wynne, now assumes to own and control said land.

Wherefore your orator prays that the said bill may be dismissed as to said Henry C. Hart, so far as any future interest in the same is concerned, and also dismissed as to Edwart D. Boit, Robt. A. Boit, Wm. A. McKenzie, who have no further interest or concern in the matters and things herein set forth; and that the said E. A. Rowland and S. W. Wynne be made parties defendants to both the original and amended bill as if they had been defendants in the original bill, and that service be perfected upon them according to law, and that he be decreed to account to your orator for the rents, income, and profits of such part of said land as he has title and assumes to own, and that he be further be decreed to deliver up the deed he holds as hereinbefore set forth for cancellation, in the same
56 manner and for the same reason as is prayed for against the other defendants in the original bill.

And that the said defendants, F. A. Jones, ex'or, &c., be decreed to account to your orator both as executor and guardian, as in the original bill set forth, out of the estate of the said M. D. Jones, deceased, or the estate and property of said defendant, F. A. Jones, ex'or, &c. And for such other and further relief, orders, and decrees as in the premises may seem equitable and just; and your orator will ever pray, &c.

TOMPKINS & DENMARK,
Sol's for Compl'nt.

(Endorsement:) In equity; in Fifth Circuit Court of U. S. for southern dist. of Ga.; Ernest D. Corker, compl't, and F. A. Jones et al., defendants; amendment to orignal bill; filed May 28th, 1879; W. P. Ward, clerk; Tompkins & Denmark, sol's for compl'nt.

Order refusing motion to enlarge time to take Testimony.

In Fifth Circuit C't U. S., so. dist. of Ga.

E. D. CORKER, compl't,
and
F. A. JONES, ex'or, &c., et al., def'ts. } In Equity.

The complainant in above stated case having moved the
57 court on the 26th of May, 1879, to enlarge the time to take testimony in above stated case, and to be allowed to take fur-

ther testimony therein, it is considered, adjudged, and decreed that the said motion of complainant be, and the same is hereby, refused and denied.

In open court, June 5th, 1877.

JOSEPH P. BRADLEY,
C. J.

(Endorsement:) In Circ't C't of U. S. for so. dist. Ga.; E. D. Corker, compl't, and F. A. Jones, ex'or, &c., et al., def'ts; order refusing motion to enlarge time to take testimony; filed June 5th, 1879; W. P. Ward, clerk.

Equity Subpœna to Appear and Answer.

United States of America, southern district of Georgia, *ss:*

ERNEST D. CORKER, complainant,
and
F. A. JONES, ex'or, et al., defendants. } In Equity.

The President of the United States of America to C. A. Rowland and S. W. Wynne, greeting:

For certain causes offered before the judges of the Circuit Court of the United States for the southern district of Georgia, in equity, you and each of you are hereby commanded and strictly enjoined that, laying all other matters aside, and notwithstanding any other excuse, you personally be and appear at the clerk's office of the said court, wheresoever the same shall then be, at Rules to be
58 had on the first Monday in August next, to answer in those things which shall then and there be objected to you in a bill and amended bill of complainant filed by said complainant; and to do further and receive what the said court shall have considered in that behalf; and this you may in nowise omit, under a penalty of five hundred dollars.

Witness the Honorable Morrison R. Waite, chief justice of the Supreme Court of the United States, at Savannah, in said district, this the 19th day of June, in the year of our Lord one thousand eight hundred and seventy-nine, and of American independence the one hundredth and third.

[SEAL.] WM. M. HEYWARD,
Deputy Clerk.

TOMPKINS & DENMARK,
Complainants' Solicitors.

Memorandum.—The defendants are required to enter appearance in the above cause, in the clerk's office, on or before the day to which this writ of subpœna is returnable; otherwise the bill may be taken pro confesso against them.

WM. M. HEYWARD,
Deputy Clerk.

TOMPKINS & DENMARK,
Complainants' Solicitors.

(Endorsement:) In the Circuit Court of the United States for the southern district of Georgia, August Rules, 1879; Ernest D. Corker, complainant, and F. A. Jones, exo'r, et al., defend-
59 ants; original subpœna in equity for C. A. Rowland and S. W. Wynne, issued 19th day of June, A. D. 1879; Wm. M. Heyward, dep. clerk; Tompkins & Denmark, complainants' solicitors.

Marshal's Return.

I certify that on the 8th day of July, 1879, at Augusta, Ga., in my district, I personally served the within writ on the within named C. A. Rowland, by (showing to him the same with the seal of the court thereon and leaving with him a copy thereof.)

Augusta, Ga., July 8th, 1879.

O. P. FITZIMONS,
U. S. Marshal.
by THOMAS J. IMINGS,
Deputy.

Service acknowledged by Samuel W. Wynne, 12th day of July, 1879.

60 *Answer of Charles A. Rowland to Amended Bill.*

In the Fifth Circuit Court of U. S. for s. dist. of Georgia.

ERNEST D. CORKER, &c., compl.,
vs.
FRANCIS A. JONES, ex'tr, et al., def'ts. } In Equity.

Bill for Injunction, Relief, &c.

The answer of Charles A. Rowland, one of the defendants, to the the original and amended bill of complaint in above-stated case, who was brought in court by amended bill, filed 28 May, 1879.

This defendant, now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken by demurrer, plea, or otherwise, to the many errors, uncertainties, and other imperfections in the said complainant's bill of complaint contained, for answer thereto, or for so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, answering, says: This defendant does not know, and has never been informed save by unreliable rumor and by complainant's bill, whether or not complainant was a minor at time of filing his bill of complaint, or whether or not complainant is now of age, or whether not Henry C. Hart
61 was his next friend and guardian, or whether or not they were and are now residence of the state of Alabama; but while he believes said allegations to be true, he at the same time insists upon due and legal proof of the same.

This defendant admits that so far as he knows or believes that the residences of his co-defendants are correctly set forth in complain-

ant's bill, as well as his own residence, but avers and believes, and so charges on information and belief, that joint cause of action exists in complainant's favor against this defendant with said co-defendants, and that his liability, if any, to conplainant is separate and distinct from the liability, if any, of said T. A. Jones as executor or as guardian to said complainant, and that he is improperly made a party to said bill or amended bill on the allegations therein contained, and also for want of allegations of fraud, collusion, confederacy with F. A. Jones as executor or guardian.

This defendant does not know, and has never been informed save by complainant's bill, of the death of Drury Corker, his leaving a will, the probate thereof, the terms of said will, who were legatees thereunder, who survived testator, what property it embraced, who were executors thereunder and who qualified as such, who
62 actively discharged the duties of executor thereunder, and avers that he is an utter stranger to all and every matter and thing alleged by complainant in his bill in reference thereto, and can form no belief in reference thereto, and while, for anything he knows to the contrary, all said allegations may be true, still he insists upon due and legal proof of the same.

This defendant, from hearsay and from allegations in complainant's bill, believes that M. D. Jones died in Sept., 1869, leaving a will, and that F. A. Jones qualified as executor thereunder on 1st Nov., 1869; but as this is a matter of record he calls for strict proof of the same.

This defendant does not know, and has never been informed save by complainant's bill, of said M. D. Jones being made guardian under the will of Drury Corker of the person & property of complainant, & of the entering upon said guardianship by said M. D. Jones, or of John W. Carswell & H. C. Hart being made trustees under said will of the property bequeathed to said Sarah C. Hart, or of her death, or the time thereof, or of the residence of complainant & his mother on the place in Burke county bequeathed to him by said will, until death of his said mother, Sarah D. Corker, on 4 Jan'y, 1869; or of complainant's subsequent removal to the state of Alabama, or the time thereof, or of the appointment of H. C. Hart as his guardian there, or of the failure of said M. D. Jones, executor and
63 guardian, to make returns to the court of ordinary of Burke county later than 1st Jan'y, 1861, as executor; or the sum of $3,434.39½ or other sum being due at that time by said M. D. Jones as executor of Drury Corker, or that the whole or any part of such sum belonged to complainant; or that said Sarah C. Hart had been fully settled with by said M. D. Jones, executor; or of five shares of the stock of the Augusta & Savannah Railroad Company of about five hundred dollars' value, the property of complainant under said will of Drury Corker, not having been accounted for by said M. D. Jones or his executor, F. A. Jones; or of the failure of said M. D. Jones as guardian to make returns to the court of ordinary of Burke county later than for the year 1863, or the sum of $14,962.98,

or other sum, being due at that time in Confederate currency, or the time when such indebtedness accrued from complainant to said M. D. Jones, guardian; or of the failure of said M. D. Jones, guardian, to credit complainant with the sum of $1,332.28 in good money due complainant for transactions in year 1860; or of the returns of said M. D. Jones as guardian being incomplete, inaccurate, & untrue; or of said guardian being in fact indebted to complainant on 7 Jan'y, 1864, the date of his last return; or of the Gilstrap & Watson place in Burke county, Georgia, containing twelve hundred acres,
64 more or less, being bequeathed or devised to Sarah C. Hart, sister of complainant and wife of Henry C. Hart, by the fourth item of the will of Drury Corker; or of said plantation having been sold by her trustees, under power vested by said will in them, to complainant, through his guardian, M. D. Jones, on or about the 24th July, 1863, for the price of $18,000.00 in Confederate currency; or of the titles being duly recorded on day of , 1863, or of the sum so paid, the sum of $15,600.00 being alleged to have been advanced for complainant by his said guardian, M. D. Jones, out of his own private funds, and being of the then value of about $1,200.00 gold coin of the United States; or of the said advance or payment not being in fact so advanced or paid; or of such advance or payment being far less than was due to complainant from estate of said Drury Corker or from said M. D. Jones, as executor and guardian as aforesaid; or of there being at the time of the alleged advance of $15,600.00 in Confederate money for purchase of said Gilstrap & Watson place in hands of said guardian, besides said railroad stock and said sum of $3,434.39½, about one hundred bales of upland cotton belonging to complainant, of average size, weight & quality, raised on said homestead place of complainant after the death of said Drury
65 Corker, out of which cotton said M. D. Jones is alleged to have promised & undertaken to reimburse himself; or of his designating the whole or any part of said cotton as belonging to him, said M. D. Jones; or of his having taken the same in payment of said alleged advance of Confederate money in July, 1863; or of said M. D. Jones having failed to sell or dispose of said cotton, or of his having allowed the same to remain complainant's place until it was destroyed by the Federal troops in latter part of year 1864; or of the filing of a bill in equity in 1867 while complainant was a minor, or of said M. D. Jones, being then complainant's guardian, & of his being then largely indebted to complainant; or of any inducement being used by said guardian to procure Mrs. Sarah D. Corker, complainant's mother, then living on his place in Burke county, Ga., to file said bill in equity in the Superior Court of said county, in the name of complainant by his next friend, Sarah D. Corker, against said M. D. Jones, guardian; or of the alleged allegation therein, through the direct imposition and misstatements of said M. D. Jones, that estate of complainant was largely indebted to
66 said M. D. Jones for said advance of $15,600.00 Confederate money to purchase said Gilstrap & Watson place, and for di-

vers other expenditures legitimately made by said Jones for complainant, E. D. Corker; or of the prayer of said bill that titles to said Gilstrap & Watson place of the alleged value of $10,000 or other large sum be decreed to be divested out of said E. D. Corker and vested in said M. D. Jones; or of the answer filed by said Jones consenting to said prayer; or of the alleged consent verdict found by the jury at November term, 1867; or of the order granted at November term, 1868, by the judge as set forth in Exhibit "B" attached to complainant's bill; or of there having been no guardian ad litem appointed in said cause; or of the loss of the originals of said bill and said answer; or of there being made no other order or decree upon said bill except the one set forth in said Exhibit "B;" or of said M. D. Jones going into possession of said Gilstrap & Watson place without any other title or conveyance from any person or person whomsoever; and this defendant avers that he is an utter stranger to all and every one of the allegations in complainant's original and amended bill of complaint to which the foregoing answer relates,

and that he can form no definite belief in reference thereto;

67 and that while, for anything he knows to the contrary, all said allegations may be true, still, as a great many of said allegations are founded upon matters of record, & if true can easily be proven, and all others if true are susceptible of proof, he insists upon due and legal proof of the same.

And this defendant avers that he is informed and believes, and so charges, that the Superior Court of Burke county, Ga., did have jurisdiction of the subject-matter & of the person of complainant in the bill alleged to have been filed, and that the said decree is not collusive, fraudulent, and void in law as to this defendant, even if so as against said M. D. Jones; that the alleged failure to appoint a guardian ad litem, if true in point of fact, only renders the said decree voidable and not void as against this defendant, who, is a bona fide purchaser without notice, for value, and entitled to the protection of a court of equity.

This defendant admits it to be true, so far as he knows or believes, that after the death of M. D. Jones, his executor, Francis A. Jones, took possession of said Gilstrop & Watson place as part of the estate of the s'd M. D. Jones, and that, as such executor, (in conjunction,

however, with certain commissioners appointed by Superior

68 Court of Burke county, Ga., in case on equity side of said court, wherein Virginia L. Jones, widow of M. D. Jones, and others, were complainants, and F. A. Jones, executor of M. D. Jones, & others, were respondents, & in which case an *or*ditor was appointed & notice given by publication for all creditors to hand in & prove claims against the estate of M. D. Jones, which proceedings are too voluminous to be annexed as an exhibit to this answer,) proceeded to sell & did sell at public sale on the first Tuesday in October, 1873, after due and legal notice under terms of order granted by the Su-

perior Court Burke county, Ga, the whole of said Gilstrop & Watson place, as follows:

No. of lot.	No. acres.	Price per acre.	Total.	Names of purchasers.
No. 1.	463½	4.00	1.854.00	Geo. O. Warnock.
No. 2.	365½	2.75	1,005.12	Wm. Warnock & Jas. Gaines.
No. 3.	371	5.90	2,188.90	Charles J. Miller.
	1.200 acres.		$5,048.02	

and that titles were made by said T. A. Jones to Ch. said Chas. F. Miller, and duly recorded in book F of deeds.

Of his own knowledge this defendant does not know how much of the purchase-money Geo. O. Warnock has paid, nor whether a deed has been executed & delivered to said Warnock by said T. A. Jones, executor, but he is informed and believes that the sum of
69 $1,000 has been so paid, & that he holds a bond for titles only.

Of his own knowledge this defendant does not know whether *all* the purchase-money of lot No. 2 has been paid, nor whether William Warnock and James Gaines, or either of them, have received titles from said F. A. Jones, executor, to any portion of said lot No. 2; but he does know of his own knowledge, and so avers, that after the said sale at public outcry the said 365½ acres, known as lot No. 2, which had been bid off by George O. Warnock for William Warnock and James Gaines, was divided into two tracts, one containing 91½ acres for William Warnock and one containing 274 acres for James Gaines, and that on or about November 20, 1873, the said George O. Warnock, by consent of said James Gaines, transferred the bid for said 274 acres to this defendant, and that on or about the 21 November, 1873, this defendant paid to said F. A. Jones, executor, $753.50, being at rate of $2.75 per acre, and received from said executor a deed to said 274 acres, described as follows: "All that tract or parcel of land lying and being in said county of Burke and state aforesaid, containing two hundred and seventy-four acres, more or less, being a portion of lot No. (2) two of what is called the Gilstrop place, of said deceased's estate,
70 and adjoining lands of A. H. Lester, James Gaines, Nancy Warnock, and others;" said deed being dated 21 November, 1873, and recorded in book G, folio 184 and 185, Burke Superior Court, on 9th February, 1875, a copy of which deed is hereto annexed as Exhibit "A," & the original of which is here to the court shown, and by the terms of which deed this defendant was not to get possession of said premises until Jan'y, 1874. This defendant by himself or his tenant remained in possession of said premises from said 1st Jan'y, 1874, for about three years, when on or about the month of *April*, 1877, this defendant by *quit claim* deed conveyed said premises to Sam'l W. Wynne, of Washington, Wilkes co. Georgia, in part satisfaction of an indebtedness due said Wynne by the firm of Daniel & Rowland, of which firm this defendant was a member, a transfer to said Wynne having previously, to wit, about month of February, 1875, been made by general assignment, & a

more specific conveyance having afterwards been made by said quit claim deed, and this defendant believes that said Wynne now owns & controls said premisses by virtue of said conveyance.

And, further answering, this defendant says he knows noth-
71 ing of the alleged sale of C. F. Miller's purchase to Edward D. Boit, Wm. A. McKenzie, & Robert A. Boit, or eather of them individually, or as a firm, nor as to who are or were in possession of said lot No. 3.

Nor does this defendant know that up to filing of the complainant's bill or at any other times the said F. A. Jones admitted that anything was still due to complainant from estate of M. D. Jones or otherwise, or that said F. A. Jones ever by letter or otherwise claimed that there was ever due to him, said F. A. Jones, executor, &c., the sum of two thousand dollars from complainant, or ever threatened to sell complainant's land in Burke co., Ga., to pay said alleged indebtedness, or does this defendant know whether or not a large sum of money is due to complainant from said F. A. Jones as executor or as guardian, and this defendant again avers that he is an utter stranger to all and every such matter and thing, and has no belief in reference thereto, and has never been informed thereof saved by complainant's bill, nor does he know anything of the change in firm of Boit & McKinzie, or of Boit & Co., or of their bankruptcy, or of the failure to incorporate any of the Gelstrop & Watson place in this schedule in bankruptcy, or of their discharge in bank-
72 ruptcy, or of their waiver or relinquishment of any claim upon the land so conveyed to them; nor does this defendant know anything of the said Ernest D. Corker having arrived at the age of twenty-one years, or of the abatement of said Henry C. Hart's letters of guardianship of the person and property of said Ernest D. Corker, this defendant being an utter stranger to all such matters, and has no belief in reference thereto, and has never been informed of the same except by complainant's bill. And this defendant, in reply especially to the allegation in the amended bill that said original bill and amendments are filed as well for the avoidance of a multiplicity of suits as because they set forth matters and things not cognizable by and prays relief not to be obtained in a court of law, says that said bill and amended bill is multifarious, duplex, inconsistent, and improper by reason of the purchasers of said premises at a sale made by the executor of M. D. Jones being made co-defendants with said F. A. Jones, executor, there being no allegation of fraud, collusion, conspiracy, or confederacy between said purchasers and said executor, and all are bona-fide purchasers for value without notice.

And, further answering, this defendant denies that said complainant is entitled to the relief or any part thereof in said complaint demanded as against this defendant, and if in error in this re-
73 gard this defendant insists that to get equity complainant must do equity and pay back said sum of $753.50, besides interest.

And this defendant prays the same advantage of his aforesaid answer as if it had been filed as a demurrer or plea of said complainant's bill; and this defendant, having fully answered, prays to be hence dismissed with his reasonable costs & charges in this behalf most wrongfully sustained.

HARPER & BRO. &
JAS. E. HARPER,
Solicitors for def't Chas. A. Rowland.

GEORGIA,
Richmond county.

Before me personally came Charles A. Rowland, to me personally known, who, on oath, says that the matters and things set forth in the above and foregoing answer are true when spoken of his own knowledge, and that when spoken upon information and belief he *he* believes them to be true.

CHARLES A. ROWLAND.

Sworn to and subscribed before me, at Augusta, Ga., this 29 day of Sept., 1879.

[SEAL.]

JAMES P. VERDERY,
Not'y Pub. R. Co., Ga.

74 STATE OF GEORGIA,
Burke county.

Whereas, by virtue of a decree in equity, rendered at the November term, 1872, of the Superior Court of said county, at the suit of Virginia L. Jones et al. *vs.* Francis A. Jones, as executor of the will of Malcolm D. Jones, late of said county, deceased, and as said executor did, on the first Tuesday of October, 1873, expose to sale at public auction, before the court-house door in Waynesboro, in said county (after advertizeing the same for the space of forty days in the Waynesboro Expositor,) the lands hereinafter more fully described;

And whereas George O. Warnock, of said county, was the highest bidder for said land, and being knocked off to him at and for the sum of one thousand and five 12½-100 dollars;

And whereas said George O. Warnock has transferred his said bid to two hundred and seventy-four acres, more or less, of said land, hereinafter more fully described, to Charles A. Rowland, of the county of Richmond, said state:

Now, know all men by these presents, that the said Francis A. Jones, as executor as aforesaid, for and in consideration of the sum of seven hundred and fifty-three & 50-100 dollars, in hand paid at and before the sealing and delivery of these presents, the re-
75 ceipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, conveyed and confirmed, and by these

presents doth grant, bargain, sell, alien, convey and confirm unto the said Charles A. Rowland, his heirs and assigns, all tract or parcel of land lying and being in said county of Burke and state aforesaid, containing two hundred and seventy-four acres, more or less, being a portion of lot No. (2) two of what is called "The Gilstrop Place" of said deceased's estate, and adjoining lands of A. H. Lester, James Gains, Nancy Warnock, and others; together with all and singular the rights, easements, ways, members and appurtenances to the said bargained premises, being, belonging or in anywise appertaining; saving and excepting that said executor reserves to himself all rents for the year 1873, and also possession of the premises of until January 1st, 1874.

To have and to hold the said bargained premises, and every part thereof, to the only proper use, benefit and behoof of him, the said Charles A. Rowland, his heirs, executors, administrators and assigns, in fee-simple. And the said Francis A. Jones, as executor
76 as aforesaid, his heirs, executors and administrators, the said bargained premises unto the said Charles A. Rowland, his heirs, executors, administrators and assigns, against all persons claiming by, from or under the said Malcolm D. Jones, deceased, or the said Francis A. Jones, executor as aforesaid, but against no other person whomsoever, shall and will forever warrant and defend by virtue of these presents.

In witness whereof, the said Francis A. Jones, as executor as aforesaid, hath hereunto set his hand and affixed his seal this the 21st day of November, in the year of our Lord eighteen hundred and seventy-three.

F. A. JONES,
Ex'or M. D. Jones, deceased.

Signed, sealed, and delivered in the presence of—
CAPERS DICKSON,
E. F. LAWSON,
Ordinary B. C.

(Endorsed:) Copy deed F. A. Jones, extr., to Charles A. Rowland, dated November 21st, 1873; Georgia, Burke county; recorded in the clerk's office of the Superior Court, book "G," folio 184 & 185, this 9th day of February, 1875; S. J. Bell, clerk.

(Endorsement:) In the fifth Circuit Court of the United States for the southern district of Georgia; in equity; Ernest D.
77 Corker *vs.* F. A. Jones, extr., et al.; answer of Charles A. Rowland, filed Sept. 30, 1879; Wm. M. Heyward, dep. clerk; J. E. Harper & Harper & Bro., s'trs for C. A. Rowland.

Replication to Defendants' Answer.

In the fifth Circuit Court of the U. S. A. for the southern district of Georgia.

ERNEST D. CORKER
vs.
FRANCIS A. JONES, ex'or, et al. } In Equity.

This replication of complainant to the answer of Charles A. Rowland:

This repliant, Ernest D. Corker, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication hereunto saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

TOMPKINS & DENMARK,
Sol's for Compl'nt.

78 (Endorsement:) In 5th Circuit Court U. S. A., southern district of Ga., November term, 1879; Ernest D. Corker *vs.* Francis A. Jones, ex'or, et al.; replication to defendant's answer; filed Jan'ry 5, 1880; W. M. Heyward, dep. clerk; Tompkins & Denmark, compl't's sol's.

Decree pro confesso as to Samuel W. Wynne, one of defendants.

In 5th Circuit Court of United States for so. dist. of Ga.

ERNEST D. CORKER, complainant,
and
FRANCIS A. JONES et al., defendants. } In Equity.

Service of a copy of the original subpœna having been duly acknowledged in writing thereon, endorsed by Samuel W. Wynne, of the county of Wilkes, in the state of Georgia, on 12 July, 1879, he having been made a party defendant by an amendment of the original bill, filed on 28th May, 1879, and said S. W. Wynne having failed to plead, answer or demur in terms of the law and rules of court, and having failed to enter an appearance in said cause, it is, on motion of counsel for complainant, ordered that the said original and amended bill of complainant be taken *pro confesso* as

against said defendant Sam'l W. Wynne, and that the cause do proceed to decree.

TOMPKINS & DENMARK,
Sols. for Compl'nt.

5th January, 1880.

(Endorsement:) U. S. Circuit Court, so. dist. of Ga.; in equity; Earnest D. Corker, compl't, and F. A. Jones, et al., def'ts; decree *pro confesso* as to Sam'l W. Wynne, one of defendants;
79 January rules, 1880; filed Jan'y 5, 1880; W. M. Heyward, dep. cl'k; Tompkins & Denmark, for compl't.

80 TESTIMONY ON PART OF COMPLAINANT.

Interrogatories propounded to Emanuel Heidt, a witness for the Complainant.

In 5th Circuit Court of the U. S.

ERNEST D. CORKER, minor, by HENRY C. HART, guardian and next friend,
vs.
FRANCIS A. JONES, ex'or of the estate of M. D. JONES, et al.
} In Equity.

1st interrogatory.—Do you know the above-named Ernest D. Corker, minor, and did you know Malcom D. Jones during his lifetime? If yes, what was the extent of your acquaintance and how long?

2nd interrogatory.—If you answer that you know Ernest D. Corker and did know Malcom D. Jones, state what legal relationship the said Jones bore to said Corker.

3rd interrogatory.—Did you know one Drury Corker? If yea, what relationship did the said Jones bear to him?

4th interrogatory.—Do you know of a cotton plantation in Burke county, Georgia, called the Gilstrap and Watson plantation? If yea, state whether or not the said Malcom D. Jones ever bought the said plantation.

5th interrogatory.—If you should state, in answer to the last interrogatory, that Malcom D. Jones did buy the Gilstrap and
81 Watson plantation, state in full the circumstances of such purchase.

6th interrogatory.—Do you know whether or not Malcom D. Jones ever made any advance for the purchase of the plantation? If you do, state what you know relative thereto.

7th interrogatory.—Did Malcom D. Jones ever have any cotton in his possession raised upon the place of Ernest D. Corker? If yea, when, how much cotton, what was its condition, and what its value? What became of it? Please reply in full.

8th interrogatory.—Was there anything to prevent the sale or

removal from Burke county of cotton during the years 1863 and 1864?

9th interrogatory.—State fully all that you may know that will benefit complainant as if thereto particularly interrogated.

A. P. & S. B. ADAMS,
Solicitors for Compl't.

Defendants object to so much of the second interrogatory as seeks to prove "legal relations" by parol testimony. Defendants also object to the 3rd interrogatory for the same reason. Defendants also object to the 4th interrogatory because the evidence of any sale to or purchase by Malcom D. Jones is in writing, and the writing is the best evidence and ought to be produced or accounted for.

82 They also object to the fifth interrogatory because the same is founded upon the answer to the fourth, (which answer is objected to,) and because the testimony sought is irrelevant and illegal.

They also object to all the interrogatories on the ground of irrelevancy and because the same, and particularly the last, are in violation of the form prescribed by law.

January 25th, 1877.

R. R. RICHARDS,
I. V. RYALS,
Def't's Att'ys.

Subject to the foregoing exceptions, the following cross-interrogations are filed:

Cross 1. Do you know everything stated by you of your own knowledge? If not, distinguish what part of your statements are known to you of your own knowledge.

Cross 2. Were you present at the purchase of the Gilstrop and Watson place, and do you know *all the facts* connected with that purchase by Malcom D. Jones; are you prepared to say that Malcom D. Jones did not advance the money for that purchase. Answer now of your own knowledge.

Cross 3. Are you prepared to say, of your own knowledge, that the cotton referred to was lost through *any fault* of Malcom D. Jones?

Cross 4. State *all* you know to benefit the defendants.

R. R. RICHARDS,
J. V. RYALS,
Def't's Att'ys.

83 (Endorsement:) In 5th U. S. circuit ct., November term, '76. Ernest D. Corker, by next friend and guardian *vs.* F. A. Jones, ex'r, et al.; in equity. Interrogatories for Rev. Emanuel Heidt.

Acknowledgment of Service.

Service of the within interrogatories acknowledged copy; commis-

sion and filing waived. Let T. P. Ravenel take the testimony. This Jan'y 25th, 1877.

R. R. RICHARDS,
J. V. RYALS.
Def'ts. Att'ys.
A. P. & S. B. ADAMS,
For Compl't.

Answers to Interrogatories.

By virtue of an agreement between the counsel of the parties to the above stated case now pending in the 5th Circuit Court of the United States, the undersigned, acting as commissioner, has caused Emanuel Heidt, a witness in said case, to come before him, who, being duly sworn true answers to make to the annexed interrogatories, deposes and answers as follows:

To the first interrogatory he answers: I knew both parties; I knew Ernest D. Corker four years; he lived in my family for one year of that time; I knew Malcom D. Jones for fifteen years; I was intimately acquainted with him in business matters, he having traded with me during that time, and he acted as my attorney at law in Burke and Emanuel counties.

84 To the second interrogatory he answers: M. D. Jones was the guardian of Ernest D. Corker.

To the third interrogatory he answers: I did know Drury Corker; I have no knowledge of any other relation existing between them but that they were friends, having heard them speak about each other.

To the fourth interrogatory he answers: I know of such a plantation in Burke county called the Gilstrap plantation; the said plantation was bought by M. D. Jones for Ernest D. Corker.

To the fifth interrogatory he answers: This plantation was formerly the property of Mrs. Corker, the mother of Ernest D. Corker; Mrs. Corker was anxious for this property to remain in the family, and M. D. Jones carried out the wish in purchasing it for her son.

To the sixth interrogatory he answers: I know that M. D. Jones did advance, for the purchase of said plantation, money amounting to some twelve or fifteen thousand dollars, for Mr. Jones so stated to me in my store on Boughton street; he said that he had advanced this money for the purchase of said plantation as a mode of investing certain Confederate money which he had on hand, and which he wished to place in a condition that he could realize something out of it after the war.

85 To the seventh interrogatory he answers: I know of no cotton raised on the Gilstop place, but do know of about one hundred and thirty bales raised on the adjoining plantation, on Rose Mary Creek, owned by Mrs. Corker and her son Ernest D. Corker jointly, which cotton I saw under the gin-house handsomely ginned and packed on said plantation, on Rose Mary Creek.

To the eighth interrogatory he answers: Malcom D. Jones told

me in 1863 that he held said cotton to reimbuse himself for the advance which he had made in the purchase of the Gilstop plantation, and, as I suppose, Jones could have removed it at his pleasure; I know of no reason why cotton could not be removed from Burke county during the years 1863 and 1864; in the year 1864 I was on the plantation on Rose Mary Creek, and asked Mrs. Corker what she was going to do with that cotton, and she said it belonged to Macolm D. Jones, to pay himself for the advance he had made for Ernest, her son, in the purchase of the Gilstrop plantation.

To the ninth interrogatory he answers: In answering to the foregoing interrogatorries, I have stated all I know; in speaking of the Gilstrop plantation, I mean the Gilstrop and Watson plantation.

To the 1st cross-interrogatory he answers: I do not; the answer made by me to the first direct interrogatory I know of my own
86 knowledge.

My knowledge of the fact stated by me in answer to the second interrogatory was derived from the fact that Malcom D. Jones made purchases from me, and directed the bills made to him as guardian for Ernest D. Corker. The answer made by me to the third interrogatory is of my own knowledge. The answer made by me in reference to the plantation in Burke county is of my own knowledge; but my knowledge of its purchase for Ernest D. Corker was derived from Malcom D. Jones. The answer to the fifth interrogatory was derived from general conversation with the Corker family and Malcom D. Jones. My answer to the sixth interrogatory was derived from conversation with Malcom D. Jones. My answer to the seventh interrogatory, so far as that there was no cotton raised on the Gilstrap plantation, was derived from my own knowledge, I having had charge of said plantation a part of said year. The cotton on the plantation on Rose Merry Creek I saw on the plantation under the gin-house myself, and was told by Mrs. Corker and Malcom D. Jones that it was raised on said plantation. My answer to the eight interrogatory shows how much was from my own knowledge
87 and how much derived from others. My answer to the ninth interrogatory is of my own knowledge. To the second cross-interrogatory he answers: I was not present at the purchase of the Gilstrap & Watson plantation. I know of no facts in relation to said purchase, except those derived from conversations with Malcom D. Jones and Mrs. Corker. I am not prepared to state that Malcom D. Jones did not advance the money for that purchase. To the third cross-interrogatory he answers: I am not prepared to state anything on that subject of my own knowledge. To the fourth cross-interrogatory he answers: I know nothing further of benefit to the defendant.

E. HEIDT.

Answered, subscribed, and sworn to by Emanuel Heidt, in my presence, this 30th day of January, in the year of our Lord one thousand eight hundred and seventy-seven.

[L. S.] T. P. RAVENEL,
Savannah, Ga. *Commissioner.*

(Endorsement:) In the 5th Circuit Court of the United States. Ernest D. Corker, by next friend & guardian, *vs.* Francis A. Jones, ex., et. al. In equity. Answer of Emanuel Heidt to the interrogatories hereto annexed, taken by T. P. Ravenel, com'r.

88 *Papers offered in Evidence by Complainant.*

In the 5th Circuit Court of United States for the southern dist. of Georgia.

ERNEST D. CORKER, compl't,
and
FRANCIS A. JONES, et al., def'ts. } In Equity.

To Messrs. R. R. RICHARDS, J. V. RYALS, and MACKALL & ERWIN, att'ys for def'ts.

GENTLEMEN: At the trial of the above stated cause you will please produce in court, to be used in evidence, the following writing:

The original deed made on or about the 24th day of July, 1863, by John W. Carswell and Henry C. Hart, as trustees of Sarah C. Hart, to Malcom D. Jones, as guardian, &c., of E. D. Corker, which deed conveyed the said Gelstrop & Watson place, mentioned and set forth in the bill of complaint, and is recorded in the records of the clerk's office in Burke county.

Very respectfully, &c.,
TOMPKINS & DENMARK,
Att'ys for Compl'n'ts.

Savannah, 15th October, 1879.

Acknowledgment of Service.

89 Service of a copy of the within notice acknowledged. Savannah, Oct. 15th, 1879. R. R. Richards, E. V. Ryals, sol's for F. A. Jones, ex'or, and Geo. O. Warnock and —— Warnock; Mackall & Erwin, att'ys.

(Endorsement:) Corker *vs.* Jones; notice to produce deed.

Deed from J. W. Carswell and Henry C. Hart, trustees, to M. D. Jones, guardian of Ernest D. Corker.

STATE OF GEORGIA,
Burke county. }

This indenture, made the twenty-fourth day of July, A. D. 1863, by virtue of the will of Drewry Corker, late of said county and state, dec'd, between Jno. W. Carswell and Henry C. Hart, trustees of Mrs. S. C. Hart, of the one part, and M. D. Jones, guardian of Ernest D. Corker, of the other part: Witnesseth, that the said J. W. Carswell and H. C. Hart, trustees as aforesaid, for and in consideration of the sum of fifteen thousand an six hundred dollars to them in hand paid at and before the sealing and delivery of these presents,

the receipt whereof is hereby acknowledged, have granted, bargained, sold, and conveyed, and do by these presents grant, bargain, sell, and convey, and the said M. D. Jones, guardian as aforesaid, all that tract or parcel of land situate, lying, and being in the sixty-first district of the county of Burke, known and described by the will
90 of the late Drewry Corker as the Gilstrop and Watson place, bounded on the north by lands of Dr. Howard, on the east by lands of the est. of Poyttness, on the south by lands of the est. of Ella Warnock, and on the west by lands of said Ernest D. Corker, and further described by plat of the same hereunto annexed marked "A," containing twelve hundred acres, more or less: to have and to hold the aforesaid tract of land unto him, the said M. D. Jones, guardian as aforesaid, in fee-simple. And the said Jno. W. Carswell and H. C. Hart, trustees as aforesaid, the said bargained premises, together with the rights, title, and possession thereof unto the said M. D. Jones, guardian as aforesaid, will warrant and forever defend the right and title thereof against themselves, as trustees as aforesaid, but against the claim of no other person or persons whomsoever.

In testimony whereof, the said Jno. W. Carswell and H. C. Hart, trustees as aforesaid, have hereunto set their hands and affixed their seals the day and year first above written.

J. W. CARSWELL,
H. C. HART,
Trustees of Mrs. S. C. Hart.

Signed, sealed, and delivered in presence of—
S. D. CORKER.
J. D. CARSWELL.

91 GEORGIA, }
Burke county. }

Before me, Richard W. Rodgers, clerk of the Superior Court in and for said county, came in person Jno. D. Carswell, who, after being duly sworn, deposes and says that he was a subscribing witness to the within deed of conveyance; that his signature as such witness genuine, and that he saw the makers of said deed, J. W. Carswell and Henry C. Hart, trustees of Mrs. S. C. Hart, sign and seal the same, and the other witness, Mrs. Sarah D. Corker, also sign the attestation in his presence, and in the presence of each other, on the day upon which the deed bears date.

J. D. CARSWELL.

Sworn to and subscribed before me this 12th day of December, 1863.

RICHARD W. ROGERS,
Cl'k Sup'r Court B. C.

GEORGIA, }
Burke county }

CLERK'S OFFICE, SUPERIOR COURT.

I, S. J. Bell, clerk Sup'r Court of said county, do hereby certify that the within three pages is a true copy from the record of my office, as appears in deed book "A," folios 125 & 126, recorded in said book on the 20th day of January, 1864. Given under my hand and seal of office this 12th day of November, 1879.

[SEAL.]

S. J. BELL,
Clerk S. C. B. C.

(Endorsement:) J. W. Carswell, H. C. Hart, to M. D. Jones, guardian; deed to realty. (Certified copy.)

92 *Certificate of Clerk Burke Superior Court as to Cases of Virginia L. Jones* v. *F. A. Jones, ex'or, &c., and E. D. Corker, by next friend,* v. *M. D. Jones, guard., etc.*

GEORGIA, }
Burke county. }

I, S. J. Bell, clerk of the Superior Court of said county, do certify that I have made thorough and diligent search throughout my office to find the original or copy papers in the cases in equity of Virginia L. Jones et al., compl'nts, and Francis A. Jones, executor, &c., in which a decree was rendered by said court on the 29 day of November, 1872, and Ernest D. Corker, by his mother and next friend, compl'nt, and Malcom D. Jones, def'ts, in which a verdict and decree were rendered at the November term, 1867, of said Superior Court; and I do certify that none of the original or copy papers in either of said cases are of file or to be found in said office, except the report of the auditor and the exceptions by Virginia L. Jones et al. to said report, in the first-named of said cases. And I further certify that none of said papers in either case are recorded on the proceedings in said court, or in any book connected therewith, except the verdict and decrees above referred to, which are upon the minutes of said court.

Given under my hand and seal of office this the 31st day of October, A. D. 1879.

[SEAL.]

S. J. BELL,
Clerk Sup'r Ct. B. C.

(Endorsement:) Certificate of cl'k Burke Sup'r Court, as to cases of Virginia L. Jones *v.* F. A. Jones, ex'or, &c., and E. D. Corker, by next friend, & M. D. Jones, guard., &c.

93 *Hart's Letters of Guardianship—Order on Petition.*

This day came Henry C. Hart and filed his petition in writing, and under oath praying that he may be duly appointed to the guard-

ianship of the person and estate of Ernest D. Corker, a minor, and averring and other things setting forth in his said petition in the state, is brother-in-law of said minor, who is over the age of fourteen years, and who resides in said county, and that said minor is entitled to property in his own right of the value of about the sum of fourteen thousand dollars; and Allen D. Merrill, a justice of the peace in and for said county, having in due form and in writing certified to the judge of this court that the said Ernest D. Corker hath duly nominated the said Henry C. Hart, it is ordered and decreed that letters of guardianship over the person and estate of the said Ernest D. Corker be granted to the said Henry C. Hart, upon his entering into bond with sufficient security in the sum of twenty-five thousand dollars; and the said Henry C. Hart having executed such bond with G. W. Whipple and F. M. Wood as his security therein, and duly filed the same in the office of the judge of this court, it is ordered that the same be approved, and that said letters do forthwith issue to said Henry C. Hart. It is further ordered that said petition be recorded.

94 THE STATE OF ALABAMA, }
Barbour county. }

Probate Court of said county.

Special Term, April 29th, 1870. Presiding. H. C. Russell, judge of said court.

THE STATE OF ALABAMA, }
County of Barbour. }

I, Wiley E. Jones, judge of probate and ex-officio clerk of said court in and for the state and county aforesaid, hereby certify that the above and foregoing is a true and correct copy or transcript of the order granting letters of guardianship to Henry C. Hart over the person and estate of Ernest D. Corker, a minor, as appears of record in my office in Orphans' Record Book No. 17, page 949; and that said order is still of force unrevoked. Given under my hand and the seal of said Court of Probate, at office in Clayton, this the 9th day of April, A. D. 1877.

[SEAL.] WILEY E. JONES,
Judge of Probate and ex-officio Clerk of said Court.

THE STATE OF ALABAMA, }
Barbour county. }

I, Wiley E. Jones, judge of the Court of Probate in and for the said county and state, do certify that the above and foregoing attestation and certificate by me made as judge of probate and ex-officio clerk of the said Court of Probate is in due form of law and
95 by the proper officer.

Given under my hand and official signature this the 9th day of April, 1877.

WILEY E. JONES,
Judge of Probate.

THE STATE OF ALABAMA, }
Barbour county. }

I, Wiley E. Jones, judge of the Court of Probate in and for said county and state, and ex-officio clerk of said court, do certify that I, Wiley E. Jones, am the judge of probate in and for said county and state, duly qualified and commissioned as such, and that the signature to the above attestation and certificate by me as judge of probate is genuine and true. Given under my hand and seal of office this 9th day of April, 1877.

[SEAL.] WILEY E. JONES,
Judge of Probate & ex-officio Clerk of said Court.

THE STATE OF ALABAMA, }
Barbour county. }

Court of Probate, April 29th, 1870.

Be it remembered and made known to all whom it may concern:

That on the application of Henry C. Hart to my said court, I have caused these letters of guardianship to issue in favor of the said Henry C. Hart in and upon the persons, goods, and chattels,
96 rights and credits of Ernest D. Corker, and, in every case which occasion may require, the said Henry C. Hart is authorized to bring suit and be sued as the lawful guardian to the said E. D. Corker.

Witness: H. C. Russell, judge of our said court, this 18th day of Sept., A. D. one thousand eight hundred and seventy, and the ninety-fourth of American Independence.

H. C. RUSSELL,
Judge of Probate, Barbour County.

(Endorsement:) The State of Alabama, Barbour county. I, H. C. Russell, judge of probate in & for said county, hereby certify that the within letters of guardianship is a correct copy from the records on file in the office, of the letters issued to Henry C. Hart upon the person & property of E. D. Corker.

Given under my hand this 18th day of Sept., 1879. H. C. Russell, judge of probate.

Court of Probate, Barbour county, estate of E. D. Corker, a minor; H. C. Hart, guardian; letters of guardianship. Recorded on Guardian's Record A, page .

97 *Certificate of Henry Hull, President of Augusta and Savannah Railroad.*

Dividends on 7 shares Augusta and Savannah R. R. stock, standing in name of D. Corker:

When paid.	To whom paid.	Rate.	
1867.			
Feb'y 19.	M. D. Jones, ex'r, No. 7	13 33½	93 33
" "	" " No. 8	3 33⅓	23 33
July 2.	F. W. Sims & Co., by order, No. 9	3 33⅓	23 33
Dec. 19.	M. D. Jones, ex'r, No. 10	3 32⅛	23 28
1868.			
July 1.	Palmer & Dippish, by order, No. 11	3 32½	23 27
Dec. 21.	M. D. Jones, ex'or, No. 12	3 32½	23 27
1869.			
July 28.	F. W. Sims & Co., by order, No. 13	3 32½	23 27

All subsequent dividends were collected by Henry B. Tompkins as attorney for Ernest D. Corker.

I certify that the above is a correct transcript from the dividends recorded as paid on the records of the company.

HENRY HULL,
Pres.

(Endorsement:) Ernest D. Corker *v.* F. A. Jones, ex'or, et al. Certificate of Henry Hull, prest. of Augusta & Savanah R. R. as to payment of dividends on stock in name of D. Corker.

98 *Letters Testamentary to Ex'ors of Drury Corker.*

STATE OF GEORGIA, }
Burke county. }

By the Court of Ordinary for said ounty.

To all to whom these presents shall come, greeting: Know ye, That on the seventh day of February, in the year of our Lord one thousand eight hundred and fifty-nine, the last will and testament of Drury Corker, late of said Burke county, deceased, was exhibited in open court, and in solemn form of law proved and admitted to record, a copy of which is hereunto annexed, and administration of all and singular the goods, chattels, and credits of said deceased was granted to John W. Carswell, Malcom D. Jones, and Henry C. Hart, the executors in and by said will named and appointed; they having first taken the oath and performed all other requisites required by law, they are by order of said court, and by virtue of these presents, legally authorized to administer the goods, chattels, and credits of said deceased, according to the tenor and effect of the said will and testament, and according to law; and they are hereby required to render a true and perfect inventory of all and singular the goods, chattels, and credits of the said deceased, and appraised and returned to this court according to law; and to render a true and correct account to the said court of their actings and do-
99 ings yearly, and every year until their administration is fully completed.

Witness my hand, as ordinary, and the seal of the said court, this eight day of March, eighteen hundred and fifty-nine.

[SEAL.] STEPHEN A. CORKER,
Ordinary.

(Endorsement:) Letters testamentary—Drury Corker. February term, 1859.

100 *Certificate of ordinary Burke county as to Order allowing M. D. Jones to Invest in Lands, &c.*

GEORGIA, }
Burke county. }

ORDINARY'S OFFICE, WAYNESBORO, *November 13th*, 1879.

I, Edward F. Lawson, ordinary in and for the county aforesaid, do certify that after having diligently examined and searched the records and files of this office, I find no petition or order authorizing Malcom D. Jones, as guardian of Ernest D. Corker, to invest fifteen thousand six hundred ($15,600) dollars in the Gilstrap plantation, purchased from Henry C. Hart, and that the minutes of the Court of Ordinary, said county, show no such order authorizing said guardian to make said purchase.

In witness whereof, I have hereunto set my hand and affix the seal of the Court of Ordinary, the day and date first aforesaid.

[SEAL.] E. F. LAWSON,
Ordinary Burke County & ex officio Clk. Ct. Ordinary.

101 *Deed F. A. Jones, ex'or, to William Warnock.*

STATE OF GEORGIA, }
Burke county. }

Whereas, by virtue of a decree in equity rendered at the November term, 1872, of the Superior Court of said county, at the suit of Virginia L. Jones et al. *vs.* Frances A. Jones, as executor of the will of Malcom D. Jones, late of said county, deceased, and as said executor did on the first Tuesday of October, 1873, expose to sale at public auction before the court-house door in Waynesboro, in said county, (after advertising the same for the space of forty days in the Waynesboro Expositor,) the lands hereafter more fully described; and whereas George O. Warnock, of said county, was the highest bidder for said land, and being knocked off to him at and for the sum of one thousand and five & 12½-100 dollars; and whereas said George O. Warnock afterwards transferred his bid for a portion of said land, to wit, ninety one & one-half acres, more or less, hereinafter more fully described, to William Warnock of said county, for the sum of two hundred and fifty-one & 62½-100 dollars:

Now, therefore, know all men by these presents, that the said Frances A. Jones, executor as aforesaid, for and in consideration of the sum of two hundred and fifty-one & 62½-100 dollars in hand paid at and before the sealing and delivery of these presents, the

receipt whereof is hereby acknowledged, hath granted, bar-
102 gained, sold, aliened, conveyed and confirmed, and by these presents doth grant, bargain, sell, alien, and confirm unto the said William Warnock, his heirs and assigns, all that tract or parcel of land situate, lying and being in said county and state, containing ninety-one and one-half acres, more or less, and adjoining lands of Nancy Warnock, Charles A. Rowland, and lot No. (1) one of the Gilstrap place, of the estate of said deceased, being a portion of lot No. (2) two, contains three hundred and sixty-five and one-half acres, more or less, and is the land for which said George O. Warnock made the aforesaid bid of one thousand and five & 12½-100 dollars.

Together with all and singular the rights, easements, ways, members and appurtenances, saving and excepting that said executor reserves to himself all rents for the year 1873 and possession of the premises until January 1st, 1874.

To have and to hold the said bargained premises, and every part thereof, to the only proper use, benefit, and behoof of him, the said William Warnock, his heirs, executors, administrators, and assigns, in fee-simple. And the said Francis A. Jones, as executor as aforesaid, his heirs, executors, and administrators, the said bargained premises unto the said William Warnock, his heirs, executors, administrators, and assigns, against all persons by, from, or
103 under the said Malcom D. Jones, deceased, or the said Francis A. Jones, as executor as aforesaid, but against no other persons whatsoever, shall and will forever warrant and defend by virtue of these presents.

In witness whereof, the said Francis A. Jones, as executor as aforesaid, hath hereunto set his hand & affixed his seal this the 21st day of November, in the year of our Lord eighteen hundred and seventy-three.

[L. S.] F. A. JONES,
Ex'or M. D. Jones, deceased.

Signed, sealed, and delivered in the presence of—
CAPIAS DICKSON.
S. J. BELL, *Clk S. C. B. C.*

(Endorsement:) State of Georgia, Burke county. Recorded in the clerk's office of Sup'r Court this the 14th day of January, 1875, in book "G," folio 163 & 164. S. J. Bell, clerk; seal. Deed F. A. Jones, ex'r, to Wm. Warnock.

104 Rec'd April 7th, 1874, of Geo. O. Warnock, thro' hands of Wm. Warnock, esq., one thousand dollars for part purchase-money due on lot No. 1, Gilstrap place, in Burke county, sold at public outcry on the first Tuesday in November, 1874, as the property estate M. D. Jones, dec'd, and bid off by said Geo. O. at the sum of $1854, balance of $854 still due.

$1,000. STEPHEN A. CORKER,
For Commissioners and Ex'or.

105 Rec'd Dec. 6th, 1873, of William Warnock two hundred and forty-five ($245) dollars, part payment of purchase-money

for ninety-one and one-half acres of land, being part of the Gilstrap place, bid off by Geo. O. Warnock, esq., who transferred his bid to said William for a part thereof, said land sold as part real estate of M. D. Jones, late of Burke county, dec'd, and sold under direction of com's in equity, to wit, J. T. Shewmake, W. W. Montgomery, J. J. Jones, and S. A. Corker.

$245. STEPHEN A. CORKER,
One of Com's.

106 *Certified Copies of Returns of Executor of Drury Corker.*

Ex'ors of Drury Corker, dec'd, in ac. with estate of said dec'd for year 1859.

No. 1.	Paid Evans, Harris & Co	$62	05
2.	" Acuff & McBride	320	00
3.	" J. C. Poythuess	577	00
4.	" Poullane, Jennings & Co	221	72
5.	" " " "	475	67
6.	" Simion Warnock	531	43
7.	" J. B. Baxley	27	50
8.	" " "	527	00
9.	" " "	11	25
10.	" Gordon Gairdeur	15	00
11.	" Carter & Perry	170	83
12.	" Alfred Haywood	18	40
13.	" S. A. Corker	5	85
14.	" " "	17	00
15.	" Thos. D. Hines	41	50
16.	" Jas. T. Bothwell	217	66
17.	" S. D. Corker	50	00
18.	" Minche Gray	10	00
19.	" S. D. Corker	350	00
20.	" Dr. Steiner	10	00
21.	" Jno. R. Sturgis, adm. d. b. n. est. J. Anderson	3,268	22
22.	" H. C. Hunt for C. Clinton	224	40
23.	" " " " S. D. Corker	345	31
24.	" Rich'd Gray, Gon. Ga. Carpenter	457	33
25.	" Jas. F. Narey	4	25
26.	" H. C. Hunt	797	59
27.	p'd T. H. & E. H. Blount	46	87
107 28.	" John Attaway	46	00
29.	" Ellington Attaway	49	68
30.	" S. A. Corker	21	04
31.	" " " ordinary	7	50
	Commissions on $9,128.04	228	20
	" on 8,760.02	219	00
		$9,575	24
	Less am't rec'd, as see forward	8,760	02
	Bal. due ex'ors	815	22

M. D. JONES.

The above return sworn to be correct before me, this July 1, 1859.

S. D. CORKER,
O. B. C.

CR.

	Rec'd on sale of 56 B. C., by Evans, Haines & Co., to A. Low & Co	2,709	44
	Rec'd on sale of 20 B. C., by Poullane, Jennings & Co., to H. F. Russell	806	16
M'ch. 12.	" on note V. Tilly, in schedule, due 1 Jan'y, 1861	50	00
" 21.	" on ac. Carter & Perry, in schedule	35	60
" 15.	" " note A. J. Lasseter, for Bennet & Jones	109	37
	" " " John Attaway	32	10
	" " " " "	30	00
	" " " James Skinner & W. Skinner	148	20
	" " " R. J. D. Roberts, D. B. Hill, sec'ty	140	00
	" " " Jacob Chance & Wm. Lighfoot	34	41
	" " " R. W. Rogers, H. J. Blount & J. Attaway	312	25
	" " " A. Lewis & M. Saxon	60	00
	" " " J. B. Jones	85	00
	" " " A. O. & S. A. Corker	175	75
	" " " M. Allen & R. A. Rowland	25	00
108	" " " A. Lewis & M. Saxon	85	00
	" " " H. C. Hart & A. Lewis.	149	80
	" " " A. L. Crawford & J. D. Kilpatrick	48	00
	" " " Jacob Chance & S. A. Corker	50	00
	" " " Attaway & Cullins	130	00
	" " " " " "	140	00
	" " " John S. Byne	42	80
	" " " Attaway & Cullins	100	00
	" " " Archa Lightfoot	171	20
	" " " R. A. Rowland & M. Allen	64	50
	" " " W. Brookins	85	00
	" " " C. B. Churchill	181	50
	" " " John & E. Attaway's note	80	62
	" " " John & James Attaway	175	00
	" " " Wm. Bennett & T. H. Blount	76	23
	" " " L. C. Martin & N. Bullard, due Jan. 1, 1861	32	14
	" " " Abel Messex & James Attaway	37	40
	" " " Jas. B. Jones	79	85
	" " " Alex. Menphen, in schedule	85	00
	" " " W. Reel & S. H. Gray	60	00
	" " " L. R. Collins & R. A. Rowland	140	00
	" " " Alex. Menphin, due 1st Jan'y, 1859,	90	00
	" " " " " " " " " "	135	00

Rec'd on note Interest on two last notes		$5 25
" " Alex. Menphin, due 1 Jan'y, 1860, $275, disc't 8 months, present worth of it		262 18
Am't of cash on hand at death of testator		1,367 30
" on ac. of E. Attaway & Co., schedule		44 37
" " " " E. Attaway		2 00
		$8,760 02

Book of amended returns from M'ch, 1856, to Nov., 1859.

109 Malcom D. Jones and J. W. Carswell, ex'ors, in ac. with estate of Drury Corker for year 1859 and up to date of year 1860:

No. 1	Am't p'd Jas. Saxon, tax for 1859		$61 47
2	" " " " " " C. L. Clinton		22 37
3	" " Lewis Lendersine		25 00
4	" " Dr. W. R. Murphy for Miss Clinton		21 00
5	" " James Henry " " "		204 39
6	" " Miss C. Clinton		100 00
7	" " W. B. Smith		1 50
8	" " Minche Gray (overseer)		552 00
9	" " A. C. Hart for Miss Clinton		58 00
10	" " " " " Negro Salem for cotton		28 50
11	" " " " trustee for wife		180 00
12	" " Thos. Oliver		3 25
13	" " C. J. Pead		74 00
14	" " W. L. Kilpatrick		65 21
15	" " Dr. J. B. Baxley		400 00
16	" " " " for Miss Clinton		60 00
17	" " Carter & Perry		67 34
18	" " Dr. T. S. Perkins		64 50
19	" " " " "		18 00
20	" " R. W. Rogers, auctioneer		15 00
21	" " " " "		5 00
22	" " F. W. Cullen		23 18
23	" " J. B. Jones for Miss Clinton		15 50
24	" " Clark & Co. " "		57 00
25	" " " " " "		123 00
26	" " J. W. Carswell " "		2 00
27	" " Bullard, Jennings & Co		4 00
28	" " G. M. Wyman for Mrs. S. D. Corker		20 25
29	" " Carter and Perrry for Miss Clinton		31 61
30	" " S. A. Gray & Co		21 00
110 31	" " Estate for board Miss Clinton, 1859		157 50
32	" " Mrs. S. D. Corker for ⅓ board Miss Clinton, 1859		52 50
33	" " Miss C. L. Clinton		200 16
34	" " Mrs. S. D. Corker bal. monied legacy		34 44

35	Am't p'd J. T. Bathwell	$1,168 20
36	" " Berrien & Jones	50 00
37	" " M. D. Jones, ex'or	18 50
	Add commission on $4,005.37	101 13
	" " 5,501.57	137 53
		$4,243 03

CR. TO EST.

Am't rec'd from est. D. Corker for bal. 1859 and 1860:

Rec'd on Wm. Brooken's note, due Jan'y, 1860	$190 00
" L. R. Collins and R. Rowland's note	140 00
" from M. Gray for beef, &c	37 19
" from ac. Perry & Carter for fodder (4,104 lbs.)	30 79
" of F. W. Cullins on ac. by note	280 00
" by net pro. 21 B. C., sold by Evans, Hains & Co	484 65
" of J. G. Howard for cotton-seed and fodder	50 25
" for board of Miss Clinton for 1859 @ $15 per mo.	157 50
" on sales cotton sold by Bothwell	1,491 69
" " " " Joseph Selby & Son	1,040 60
" " 38 B. C. sold to T. J. Jennings	1,423 91
" on note M. D. Jones in schedule	175 00
	$5,501 57
Less am't p'd contra	4,243 04
Bal. due est	$1,258 53

M. D. JONES.

111 The foregoing return sworn to and subscribed before me June 8, 1860.

S. A. CORKER, *O. B. C.*

Ex'ors of D. Corker, &c., in ac. for year 1860:

No. 1	P'd M. D. Jones, guard. Ernest D. Corker, am't sales perishable property	$2,527 48
	P'd for Miss C. L. Clinton for 1860	311 18
	P'd Jas. E. Heidt, trustee for wife, on final settlement, final receipt on record	5,268 03
	Com'ns on $8,106.69 paid out	202 66
	" " $11,590.18½ rec'd	289 75
		$8,599 10

M. D. JONES.

Sworn to and subscribed before me July 1, 1861.

JAS. T. NURY, *Clerk S. C. B. C.*

CR. TO ESTATE.

By am't sales perishable property due 1 Jan'y, '61			.....	$7,941	11½
Rec'd on note,	J. Bearfield in schedule,	"	.....	133	50
" "	J. J. & Farley Bearfield	"	.....	80	25
" "	A. & B. Lewis,	"	.....	90	95
" "	"	"	.....	139	10
" "	John T. Palmer and E. A. Allen,	"	.....	117	70
" "	M. Allen, G. Douse, sec'y.,	"	.....	80	25
" "	B. H. Gregory and R. Rowland,	"	.....	149	80
" "	Julia Hayne		.....	38	52
" "	hire of Miss Clinton's negroes for 1860, (see rep. of record.)		.....	2,819	10
				$11,590	18½
112 Less am't per contra			.....	8,599	10
Bal. due est. Jan'y 1, 1861			.....	$2,991	08½

GEORGIA, }
Burke county. }

I, , ordinary of said county, and ex-officio clerk of said Court of Ordinary, do certify that the above and foregoing six pages of writing are true and correct transcript from the record books of file in my office and court, and that they include all and every matter and thing returned to said court by Malcom D. Jones, John H. Carswell, and Henry C. Hart, as executors of the last will of Drurey Corker, deceased, from first to last, and that there is no other return or record made by the said executors, or either of them, except that set forth above; and that there are no other or further papers, records, returns, or evidence in my office or court showing any other statement concerning the said returns of said executor, or either of them.

Given under my hand and seal of office this the twenty-first day of May, A. D. 1879.

[SEAL.] E. B. LAWSON,
Ordinary Burke county & ex-off. Clerk Ct. Ordinary.

113 (Endorsement:) Ernest D. Corker, compl't, and F. A. Jones, ex'or, &c., et al., def'ts; certified copies of the returns of executors of Drewry Corker; E. B. Lawson, ordinary, B. C.

Certified Copies of the Returns of M. D. Jones, as Guardian, etc.

M. D. Jones, guardian of Ernest D. Corker, ac'ts for 1860, as per book B, page 238.

ORDINARY'S OFFICE, BURKE CO., GA., 1*st July*, 1860.

No. 1.	Paid	J. W. Carswell, ex. D. Corker, for perishable property	$2,527 48
2.	"	Rich'd Gray	10 00
3.	"	" "	5 30
4.	"	" "	150 00
5.	"	R. C. Chance (tax)	33 33
6.	"	Dr. E. Hatcher	11 00
7.	"	G. W. Oglesby	17 50
8.	"	W. L. Kilpatrick, ½ ac't	19 50
9.	"	T. T. Elleston	75 00
10.	"	Allman & McCanless	75 00
11.	"	Carter & Perry	83 25
12.	"	J. T. Bothwell	540 22
13.	"	M. D. Jones	169 60
		Com'ns on $3,717 23	
		" " 5,376 86	134 42
			$3,944 58

114 CR.

Rec'd from ex'ors Duewry Corker to am't perishable property at sale	$2,527 48
Rec'd ½ sales 119 b. c. sold J. T. Bothwell, as per bill	2,740 38
	$5,276 86
Less am't paid out	3,944 58
Am't due minor	$1,332 28

M. D. JONES.

Sworn to and subscribed before me July 1, 1861.

JAS. F. NARY,
Clk. S. C. B. C., Book B, p. 238.

M. D. Jones, guardian, in ac't with E. D. C., &c., 1861.

No. 1.	P'd	Jas. F. Nary	$5 28
2.	"	R. C. Chance (tax)	51 53
3.	"	Jas. Lippman	66 28½
4.	"	Geo. H. Johnson	28 67½
5.	"	W. McD. Gray	25 00
6.	"	Moore & Craigg	17 68
7.	"	J. T. Bothwell	100 00
8.	"	Weldick Gray, adm'r Rich. Gray	112 50
9.	"	Dye & Morrison	391 95½
10.	"	M. D. Jones, guard	100 00
			$898 90½

1862.

No.	1.	P'd John B. Moore	13	25
	2.	" Edward Byrd, ½ ac't	7	50
	3.	" Carter & Perry, "	26	62
	4.	" " " "		87½
115	5.	" John Attaway, "	17	00
	6.	" J. W. Carswell, "	60	00
	7.	" J. T. Bothwell, "	17	74
	8.	" " "	545	89
	9.	" R. E. Whitfield, "	40	61
	10.	" Dr. E. Hatcher, "	11	50
	11.	" " D. S. Perkins, "	119	25
	12.	" E. E. Salmon, "	150	00
	13.	" S. D. Corker, "	135	97½
	14.	" Dye & Morrison, "	37	28½
	15.	" A. J. Blount (tax 1864)	63	35
	16.	" F. A. Jones, ½ ac't	251	75
	17.	" Bowen, Brown & Co	144	75
	18.	" Behar & Foster, ½ ac't, see bill	142	52
	19.	" ½ expenses on corn	36	10
	20.	" M. D. Jones, guard	100	00
		Com'ns on $2,820 87	70	52
		" " 1,289 11½	32	22
			$2,923	61
		Less am't rec'd contra	1,289	11½
		Bal. due guard	$1,634	50

DR.

1862. Am't rec'd.

Rec'd ½ sales 79 bales fodder by Balen & Foster	$261	61
" ½ hire of negroes on foot walks	27	05
" ½ 800 bush. corn to E. Heidt	500	00
" ½ 6 b. c. by Dye & Morrison	135	93
" ½ 150 sacks corn	364	52½
	$1,289	11½

116 The cotton crop of 1861 and 1862 not yet sold.

M. D. JONES.

Sworn to before me Feb'ry 9th, 1863.

J. S. QUENAN, *J. P.*,
Book B, p. 332.

M. D. Jones, guardian, in ac't with Ernest D. Corker, minor, etc.

1863.

Voucher	1.	P'd ½ S. C. Perkins & Bro. ac't	$21	19½
"	2.	" " " "	4	15½
"	3.	" H. C. Hart for Gilstrop land	15,600	00
"	4.	" ½ ac't H. L. Kilpatrick	31	25
"	5.	" " Heidt, Jandon & Co	27	63
"	6.	" E. Gadick, cl'k	6	00
"	7.	" ½ ac't Henry Moon	1	75
"	8.	" " J. T. Bothwell & Co	73	00
"	9.	" " Heard & Clark	764	23
"	10.	" " F. A. Jones	19	62
"	11.	" " Dye & Morrison (per see bill)	84	29½
"	12.	" " Dr. B. E. Whitfield	15	25
"	13.	" " John R. Wells	1	59
"	14.	" " W. E. Goodrich	117	53
"	15.	" H. J. Blount, state tax	107	10
"	16.	" T. H. Blount, Confed. tax	748	00
"	17.	" ½ ac't F. A. Jones	400	00
"	18.	" M. D. Jones	150	00
			$18,167	85
		Com'ns on $18,167 85	454	19
		" " 3,752 88	93	82
			$18,715	86
		Less am't rec'd contra	3,752	88
		Bal. due guard	$14,962	98

117 CR.

1863.	Am't received.		
May 2.	Rec'd div. on Aug. & Sav'h R. R. stock	37	00
8.	½ sales of 301 30–56 bush. corn, sold by Dye & Morrison @ $1.80	271	34
8.	½ of 408 25–56 bush. corn, sold by Dye & Morrison, @ $1.80	367	52
	½ sales of 500 bush. corn to H. M. Davenport, Q. M., @ $1.80	450	00
	from Stutton Jones, Q. M., for sale 226 sacks corn	413	00
July 25.	from ex'ors of Drury Corker, on final settlement	957	34½
	from T. S. Jones, Q. M., for 569 sacks corn @ $2.25	1,256	62½

M. D. JONES.

Sworn to and subscribed before me Jan'y 7th, 1864.

J. B. JONES,
J. S. Co., B. C.

Book B, p. 592.

GEORGIA, }
Burke county. }

I, E. F. Lawson, ordinary of said county and ex-officio clerk of said court of ordinary, do certify that the above and foregoing five (5) pages of writing are transcripts from the record books of file in my office and court, and that they include all and every matter and thing returned to said court by Malcom D. Jones as guardian of said
118 Ernest D. Corker, from first to last, and that there is no other return or record made by the said Jones as said guardian, except that set forth above, and no other or further papers, records, or returns, or evidence in my office or court, showing any other statement concerning the returns of said Jones as said guardian.

Given under my hand and seal of office this the twenty-first day of May, A. D. 1879.

E. F. LAWSON, [SEAL.]
Ordinary Burke county, Ga.,
ex-off. Cl'k C't Ordinary.

(Endorsement:) Ernest D. Corker, compl't, and F. A. Jones, ex'or, &c., et al., def'ts; certified copies of the returns of M. D. Jones as guardian, &c.; E. F. Lawson, ordinary, B. C.

119 TESTIMONY ON PART OF DEFENDANTS.

In the 5th circuit of the United States for the southern district of Georgia.

Interrogatories exhibited to John W. Carswell, a witness on behalf of the defendant.

ERNEST D. CORKER, by next friend, complainant,
and
FRANCIS A. JONES, exo'r, et al., defendants. } In Equity.

Interrogatories to be exhibited to John W. Carswell, a material witness on behalf of said defendant, which said witness resides out of the county of Chatham and in the county of Burke, in said state of Georgia.

1st. Do you know the parties to the above stated cause, and did you or not know Malcom D. Jones in his lifetime?

2nd. Do you or not know Mrs. Sarah D. Corker, the mother of Ernest D. Corker, who, as the next friend of Ernest D. Corker, filed a bill on the equity side of the Superior Court of Burke county, against Malcom D. Jones, guardian of Ernest D. Corker, alleging that the estate of Ernest D. Corker was largely indebted to said Malcom D. Jones for an advance of fifteen thousand six hundred dollars to purchase a place in said county called Gilstrop and Watson place, and for divers other expenditures legitimately made by
120 said Jones for said Ernest D. Corker, and praying that titles for said Gilstrop and Watson place be decreed to be divested out of said Ernest D. Corker and to vest in said Malcom D. Jones?

If yea, please state whether or not there was any fraud on the part of said Malcom D. Jones in or concerning or connected with the decree made upon said bill, and please state all the facts connected with the filing of said bill and the decree thereon which may or may not show any fraud therein of any kind, character, or description. Please state whether or not the said sum of fifteen thousand six hundred dollars or any part thereof was due to said Malcom D. Jones, by the said Ernest D. Corker, at the time of filing said bill of complaint.

3d. Was there or not any collusion between said Sarah D. Corker, the mother of said Ernest D., and Malcom D. Jones, in or connected with the filing of said bill and obtaining said decree? Answer fully.

4th. Do you know anything concerning one hundred and thirty-four bales of upland cotton belonging to Ernest D. Corker, which was situate upon said place of Ernest D. Corker, or anywhere else in Burke county, Georgia, and if so, what become of said cotton? Did or did not Malcom D. Jones promise to reimburse himself out of the whole or a part of said cotton for said advance of
121 money for the purchase of said Gilstrop and Watson place, and did or did not said Jones fail to sell or dispose of said cotton and allow the same to be destroyed by the Federal troops, in the year 1864, and did not said cotton remain on said place until destroyed?

5th. State whether or not Malcom D. Jones at the time of the advance of fifteen thousand six hundred dollars for the purchase of said Gelstrop and Watson place, was indebted to said Ernest D. Corker or the estate of Drury Corker. State all you know concerning the nature of the accounts between the said Malcom D. Jones and Ernest D. Corker and the estate of Drury Corker.

6th. Please state who received the money for the Gilstrap and Watson place; who paid for it; where did it come from, and what was the state of accounts between Malcom D. Jones, Ernest D. Corker, and the estate of Drury Corker at the time of the purchase of said place.

7th. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matter in question in this cause? If yea, set forth the same fully and at large in your answer.

J. V. RYAL,
R. R. RICHARDS,
For Defendants.

122

Complainant by his solicitors asks:

1. What was the nature of the bill referred to in the second direct? State fully all that you may know relative to its contents.

2. In answering questions concerning any alleged advance for the

purchase of the Gilstrap and Watson place concerning accounts, and touching the 134 bales of cotton, do you confine yourself to your own knowledge; what are your sources of information?

3. Do you bear any relation of consanguinity or affinity to Francis A. Jones or his intestate; if yea, what?

A. P. & S. P. ADAMS,
Complainant's Solicitors.

Answers to Interrogatories.

STATE OF GEORGIA, }
Burke county. }

By an agreement between the parties or counsel in the case of Ernest D. Corker, by next friend, complainant, and Francis D. Jones, et al., defendant, pending in the 5th Circuit Court of the United States for the southern district of Georgia, the undersigned, acting as commissioner, has caused John W. Carswell, a witness in said cases, to come before me, who, being duly sworn true answers to make to the annexed interrogatories, deposes and answers as follows:

To 1st direct interrogatory he answers: I know them, and did know M. D. Jones in life.

123 To 2nd direct inter. answers: Know Mrs. Sarah D. Corker, mother of Ernest D. Corker, during her life; know nothing of the filing of any bill for the purposes mentioned in the interrogatory. The Gilstrap place referred to was purchased by M. D. Jones, as trustee of Ernest D. Corker, from me, as the trustee of Mrs. Henry C. Hart Deed made to him as said trustee by Mr. Henry C. Hart and myself, who was co-trustee for Mrs. Henry C. Hart aforesaid. I mention this fact that after said deed had been made by us, Mr. Malcom D. Jones asked me on one occasion to change the deed to him and I refused, because in my judgment I could not legally do so after having made the other deed with my co-trustee, Mr. Hart. I do not know that any fraud was intended; I am satisfied that the money paid for said land at the time was paid by Mr. Malcom D. Jones, and for this reason, that from my connection with the estate of said Ernest D. Corker it was not possible for that much money to be in the hands of Mr. M. D. Jones for him. I cannot answer of my own knowledge concerning the $15,000 due to Mr. M. D. Jones. What I know of any indebtedness is stated above.

Answer to *third* direct inter.: I do not know anything about the matter referred to in this interrogatory.

124 Answer to 4th direct interrogatory: My impression from memory, being connected with the management of the place as co-executor with Mr. Malcom D. Jones of Drury Corker, father of said Ernest D., that there was about one hundred and thirty bales of cotton, which I think was owned jointly by Mrs. Sarah D. Corker & Ernest D. Corker. It was burned by the Federal army on the 28th of November, 1864, as I now remember. The Watson

place was included in the survey known as the Gilstrap place that I've mentioned. I do not know what Mr. M. D. Jones promised himself to reimburse himself for any moneys he may have paid out. He failed to sell and dispose of the cotton, and it was burned, as already ssated.

Answer to 5th direct interrogatory: Do not know how he stood in account with the estate of either Ernest or Drury Corker, as I did not assist him in making up the accounts of either estate. I managed the land of the estate.

Answer to 6th direct interrogatory: Mr. Henry C. Hart received the money for the sale of the places referred to as co-trustee aforesaid. The rest of this interrogatory I have already answered.

Answer to 7th direct interrogatory: I believe I have stated all I know in connection with this transaction for either party.

Answer to 1st cross-inter.: I have stated in the direct that I know nothing of the bill alluded to.

Answer to 2nd cross-interrogatory: As Iv'e stated, Mr. M.
125 D. Jones paid for this land, as I believe, referred to, because the estate had no money. Mr. Jones was wealthy, and had ample means to advance the purchase money. Know nothing of the accounts, as stated in the direct. Of my knowledge concerning the cotton, I have already answered, also in the direct.

Answer to 3rd cross-interrogatory: None whatever.

J. W. CARSWELL,
Witness.

Answered, subscribed, sworn to before me this March 10th, 1877.

[L. S.] HERMAN H. PERRY,
Commissioner.

(Endorsement:) In equity, in the 5 circuit of the United States for the southern district of Georgia; Ernest D. Corker, compl't's, and Francis A. Jones, ex'or, et al., defendants; service of within interrogatories acknowledged; copy & commission waived; let any disinterested party take the testimony; this February 22, 1877; A. P. & S. B. Adams, for compl't.

126 *Interrogatories exhibited to Stephen A. Corker, a witness on behalf of the defendant.*

In the 5 circuit of the United States for southern district.

ERNEST D. CORKER, by next friend, complainant,
vs.
FRANCIS A. JONES et al., defendants. } In Equity.

Interrogatories to be exhibited to Stephen A. Corker, a material witness on behalf of the said defendant, *with* said witness resides out of the county of Chatham and in the county Burke, in the state of Georgia.

1st. Do you know the parties to the above stated case? And did you or not know Malcom D. Jones in his lifetime?

2nd. Do you or not know Mrs. Sarah D. Corker, the mother of Ernest D Corker, who, as the next friend of Ernest D. Corker, filed a bill on the equity side of the Superior Court of Burke county, against Malcom D. Jones, guardian of Ernest D. Corker, alleging that the estate of Ernest D. Corker was largely indebted to said Malcom D. Jones for an advance of fifteen thousand six hundred dollars, to purchase a place in said county called Gilstrop & Watson place, and for divers other expenditures legitimately
127 made by said Jones, for said Ernest D. Corker, and praying that titles for said Gilstrop & Watson place be decreed to be divested out of said Ernest D. Corker and vest in said Malcom D. Jones? If yea, please state whether or not there was any fraud on the part of said Malcom D. Jones in, or concerning, or connected with the decree made upon said bill. And please state all the facts connected with the filing of said bill and the decree thereon, which may or may not show any fraud therein of any kind, character or description. Please state whether or not the said sum of fifteen thousand six hundred, or any part thereof, was due to Malcom D. Jones at the time of filing said bill of complaint.

3rd. Was there or not any collusion between said Sarah D. Corker, the mother of said Ernest D. Corker, and Malcom D. Jones, in or connected with the filing of said bill and obtaining said decree? Answer fully.

4th. Do you know anything concerning one hundred & thirty-four bales of upland cotton, belonging to Ernest D. Corker, which was situate upon said place or anywhere else in Burke county, Georgia, and if so, what became of said cotton? Did or did not Malcom D. Jones promise and undertake to reemburse himself out of whole or a part of said cotton, for said advance of money for the
128 purchase of said *said* Gilstrop & Watson place, and did or did not said Jones fail to sell and dispose of said cotton, and allow it to remain on Ernest D. Corker place until it was destroyed by the Federal troops in the latter part of the year 1864? Answer fully all the facts.

5th. State whether or not Malcom D. Jones, at the time of the advance of fifteen thousand six hundred for the purchase of the Gilstrop & Watson place, was indebted to the estate of Drury Corker, or to said Ernest D. Corker. State all you know concerning the nature of the accounts between Ernest D. Corker and said Malcom D. Jones, also Drury Corker's estate.

6th. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

J. V. RYALS,
R. R. RICHARD,
Consulter for Deputy.

Complainant asks: (1) Were you connected with the equity cause referred to in 2nd direct? If yea, in what capasity? What
129 was it about? Please answer fully, giving substance of bill.

Q. In answering concerning the alleged indebtedness of Ernest D. Corker to his guardian, M. D. Jones, the purchase of the Gilstrop & Watson place, and the 134 bales of cotton, have you confined yourself to your own knowledge; what are your sources of information?

A. P. & S. B. ADAMS,
Solicitors for Complainant.

(Endorsement:) In equity; in the 5 circuit of the United States for the southern district of Georgia; Ernest D. Corker, by next friend, comp'ts, and Francis A. Jones, ex'or, et al., defend's; service of within interrogatories *at*knowledge; copy and commission waived; let any disinterested party take the testimony; this February 24, 1877; A. P. & S. B. Adams, for compl't; Ryals, Richards.

Answers to Interrogatories.

STATE OF GEORGIA, }
Burke county. }

By virtue of an agreement between the parties or counsel in the case of *Ernest D. Corker, by next friend*, vs. *Francis A. Jones, ex'or, et al.*, pending in the 5th Circuit Court of the United States for the southern dist. of Georgia, the undersign, acting as commis-
130 sioner, has caused Stephen A. Corker, a witness in the case, to come before me, who, being duly sworn true answer to make to the annexed interrogataries, deposes and answers as follows:

Answer to 1st interrogatory.—I think I know the parties; I knew M. D. Jones in his lifetime.

Answer to 2d inter.—I knew Sarah D. Corker, mother of Ernest D. Corker; she is now dead; in the year 1867 or 1868 M. D. Jones handed me a note in writing from Sarah D. Corker, and from the best of my knowledge of her handwrite it was signed by her, in which she directed me as her solicitor to file a bill in equity, the object of which was to divest title as to Ernest D. Corker in the Gilstrop place and to vest title in M. D. Jones individually, who now the guardian of said minor, E. D. Corker, and to provide furthermore that the indebtedness of said minor's estate to M. D. Jones should be cancelled; the bill was filed, and in the name of Sarah D. Corker as next friend of Ernest D. Corker; a decree was rendered accordingly; witness did not see Mrs. Sarah D. Corker, but does not think there was any fraud in it; I do not know whether the $15,600 was due M. D. Jones or not, except from hearsay.

Answer to 3d inter.—Witness heard no conversation between

Sarah D. Corker and M. D. Jones; all witness knows is the
131 note referred to; know of no collusion except that they co-operated in the matter, and it seemed to be a matter of consent between them.

Answer to the 4th inter.—Witness knows nothing whatever about the cotton referred to except by hearsay; he was in the Confederate army at the time.

Answer to 5th inter.—Witness answers he knows nothing about except from hearsay.

Answer to 6th inter.—Know nothing further that would benefit defendant.

Answers to Cross-interrogatories.

To 1st cross-answer.—I was solicitor for Mrs. Sarah D. Corker, next friend of said minor; the object of the bill has been stated in answer to 2d direct interrogatory.

To 2d cross-answer.—In answering as to the indebtedness of E. D. Corker's estate to M. D. Jones, his guardian, and as to the purchase of the Gilstrop place, and concerning the 130 bales of cotton, I have answered from my own knowledge; I had no other means of information than that stated in my direct interrogatories.

STEPHEN A. CORKER.
Witness.

Answered, subscribed, and sworn to before me this March 6th, 1877.

HERMAND H. PERRY, [L. S.]
Commissioner.

132 *Interrogatories propounded to Francis A. Jones, a witness in behalf of the defendants.*

In the 5th Circuit Court of the United States for the southern district of Georgia.

ERNEST D. CORKER, by next friend, complainant,
and
FRANCIS A. JONES, ex'or, &c., et al., defendants. } In Equity.

Interrogatories to be propounded to Francis A. Jones, executor of Malcom D. Jones, a material witness for the defendants in the above stated cause, who resides in the county of Emanuel, state of Georgia.

1st direct. State all you know about one hundred and thirty-four bales of cotton mentioned in complainant's bill. Did or did not Malcom D. Jones ever promise or undertake to reimburse himself out of said cotton for any advances made by him for the purchase of the Gilstrop and Watson place? Did or did not the said Malcom D. Jones ever take the said cotton for said advances?

2nd. Was or was not Malcom D. Jones guilty of any negligence

in failing to sell or dispose of said cotton or in allowing the same to remain on complainant's place until destroyed by the Federal troops in the 1864? (If you say it was destroyed in 1864.)

133 3rd. Who was in charge of said cotton during the years 1863 and 1864, and to whom did said cotton belong during those years, and until the same was destroyed?

4th. Did or did not Malcom D. Jones look individually after said cotton, or was he disabled from so doing, and if disabled, in what manner?

5th. What care, if any, was taken of said cotton; was the same or not kept separate and distinct from cotton of Malcom D. Jones individually; did or did not Malcom D. Jones take the same care of said cotton as he did of his own, and did he or not act as a prudent man in taking care of the said one hundred and thirty-four bales of cotton?

6th. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this case, or either of them, or that may be material to the subject of this your examination on the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

J. V. RYALS,
R. R. RICHARDS,
Sol's for Defendants.

(Endorsement:) In the fifth Circuit Court of the United States for the southern district of Georgia; in equity; Ernest D. Corker, by next friend, compl't, and Francis A. Jones, ex'or of M. D. Jones, et al., def'ts. Interrogatories on behalf of def'ts for Francis

134 A. Jones. Service of within interrogatories acknowledged; copy waived; let commission issue instanter this March 23, '77; A. P. & S. B. Adams, for def'ts. Filed in office Apl. 11, 1877; W. F. Warner, deputy clerk.

Answers to Interrogatories.

Examination and deposition of witness produced, sworn, and examined by the undersigned commissioners, in virtue of the annexed commission, issuing out of the honorable the Circuit Court of the United States for the southern district of Georgia, taken and reduced to writing in Waynesboro, Burke county, Georgia, on this the 23d day of April, 1877.

FRANCIS A. JONES, aged 49 years, being duly sworn, answers and deposes as follows, to wit:

To the first direct interrogatory the witness, answering, saith:

1st direct. The 134 bales cotton was on the plantation of the est. Drury Corker, under the screw in gin-house and under gin-house; it was looked upon as the property of said estate; I know no promise or attempt to reimburse for advances on the Gilstrop and Watson place; he did not take cotton for advances.

2d. He was not guilty of any negligence. Proceeds of the cotton could not be handled to any advantage, as currency was de-
135 preciating in value; cotton itself was a better investment; cotton was destroyed by Federal troops under Sherman's command; don't remember date; it was burned by Sherman's army in its march through Georgia.

3rd. I was in charge of said cotton during the years 1863 and 1864, as agent; M. D. Jones was in Confederate army in Virginia; I regarded it as property belonging to est. of Drewry Corker.

4th. He did not look individually after said cotton; was disabled in that he was in Confederate army in Virginia.

5th. He had no cotton in 15 miles of said cotton that I know of; same care taken of that cotton as other belonging to M. D. Jones; it was put in and under gin-house and under the screw; he acted as a prudent man in taking care of said cotton while hs was here, and so did I as his agent.

6th. After the results of the war—cotton being burned, negroes freed, stock carried away and killed by Sherman's army, plantation devastated, and a large debt due by E. D. Corker to M. D. Jones, his guardian, for Gilstrop and Watson place—I thought it very wise in Corker's mother, as his next friend, to apply to the Superior Court of Burke county, Georgia, as shown by the records by her attorney, Stephen A. Corker, a friend and a relative, to cancel the deed made by Hart to M. D. Jones, guardian for Corker, for Gilstrop
136 and Watson place, and relieve the said Corker of the large debt against him.

FRANCIS A. JONES.

Signed in presence of—
BENJ. F. DUKE,
AMOS P. PERRY,
Commissioners.

137 *Decree.*

In the Fifth Circuit Court of the United States for the southern district of Georgia, April term, 1880.

ERNEST D. CORKER, complainant,
and
FRANCIS A. JONES, executor of MALCOM D. JONES, et al., defendants.
} In Equity.

This cause came on regularly to be heard, and was heard upon the bill and amendments to bill, the answers, exhibits and proofs; and after argument and due consideration thereof, it is thereupon ordered, adjudged, and decreed that nothing appears to impeach the titles of the defendant to the premises described in said bill as the Gilstrop and Watson place; that the complainant has no title to, interest in, or claim to said premises, and as to all of the defendants, except Francis A. Jones, executor of Malcom D. Jones, the

said bill is dismissed, with costs to said defendants, and said defendants shall go hence without day.

And it is further ordered, adjudged, and decreed, as to Francis A. Jones, executor of Malcom D. Jones, that he is not, as such executor, nor was the said Malcom D. Jones, indebted to the complainant, either as executor of the estate of Drury Corker, or as
138 guardian of complainant, save and except as to the sum of two hundred and thirty-three and 8–100 dollars, received by said Malcom D. Jones as executor of Drury Corker, and for which he is liable to account as guardian of complainant, being dividends received from the five shares of stock mentioned in said bill; the complainant admitting through his solicitors that he had recovered the five shares aforesaid, together with accumulated dividends thereon, except said sum of two hundred and thirty-three 8–100 dollars, principal, and two hundred and one 37–100 dollars for interest to April 27, 1880, and 7 per cent. int. on said sum till payment. And as to said two hundred and thirty-three dollars and interest, it is ordered, adjudged, and decreed that complainant do recover the same, but without his costs in this behalf expended, and have execution therefor, to be levied of the goods and chattels, lands and tenements, of Malcom D. Jones, in the hands of said Francis A. Jones, to be administered, with liberty to complainant, should a return of nulla bona be made on said execution, to have execution issued, to be levied on the goods and chattels, lands and tenements, of Francis A. Jones, individually, unless he shows a deficiency of assets of the estate of Macolm D. Jones according to statute of Georgia in distribution of assets to pay said execution by rules day in June next.

W. B. WOODS,
April 30, 1880. *Judge.*

(Endorsement:) In U. S. 5th Circuit Court, southern dis-
139 trict of Georgia, April term, 1880; Ernest D. Corker, complainant, *vs.* Francis A. Jones, executor of Malcolm D. Jones et al., defendants. Decree—Filed in office 30 day of April, 1880; W. P. Ward, clerk; R. R. Richards, J. V. Ryals; Mackall and Erwin, df'ts att'y.

140 *Order allowing Appeal.*

In the 5th Circuit Court of the United States for the southern district of Georgia.

ERNEST D. CORKER, complainant,
and
FRANCES A. JONES, executor, &c., of M. D. JONES, GEORGE O. WARNOCK, WILLIAM WARNOCK, JAMES GAINS, CHARLES J. MILLER, C. A. ROWLAND, and SAMUEL W. WYNNE. } In equity.

Bill for Relief, &c.

A final decree having been rendered in this cause on the 30th day

of April, 1880, in favor of the complainant for the sum of two hundred and thirty-three dollars and interest against Francis A. Jones, executor, &c., of M. D. Jones, dec'd, and against the complainant and in favor of the defendants in all other respects, and the said bill having been dismissed as to all the other defendants; and said complainant giving notice of an intention to appeal to the Supreme Court of the United States to review and reverse the said decree complained of; on motion of the solicitors of said complainant, Ernest D. Corker, it is ordered and adjudged that the said appeal be allowed, and is hereby allowed, and that the bond is fixed at
141 five hundred dollars, surety to justify before the clerk of this court or some commissioner of the United States, and when approved by the officer before whom such justification is made, to be received by the clerk, which being done the allowance of this appeal shall operate as a supersedeas.

In open court 4 May, 1880. JOHN ERSKINE,
Judge.

TOMPKINS & DENMARK,
Sol's for Compl'nt.

Service of this order acknowledged, copy waived, and all other or further notice and citation waived.

4th May, 1880. J. V. RYALS,
R. R. RICHARDS,
Sol's for Francis A. Jones, ex'r, and for Geo. O. Warnock and Wm. Warnock.
WM. W. MACKALL AND
R. G. ERWIN,
Sol'rs for Charles Miller.
CHISHOLM AND ERWIN,
Sol'rs for Rowland.

[Endorsement:] In Circuit Court of U. S. for southern dist. of Ga. Ernest D. Corker, compl't, and F. A. Jones, et al., def'ts. Order allowing appeal to Supreme Court. Filed May 4, 1880. W. M. Heyward, dep. cl'k. Tompkins & Denmark, sol's for compl'nt.

142 *Petition for Appeal.*

In the fifth Circuit Court of the United States for the southern district of Georgia.

ERNEST D. CORKER, complainant,
and
FRANCIS A. JONES, executor of M. D. JONES, &c., GEORGE O. WARNOCK, WILLIAM WARNOCK, JAMES GAINS, CHARLES J. MILLER, C. A. ROWLAND, and SAMUEL W. WYNNE, defendants.

Bill for Relief, &c.—Decree on 30 April, 1880.

To the honorable the Supreme Court of the United States:

The appeal of Ernest D. Corker, the above-named complainant

and appellant, respectfully sheweth: That on the 14 day of October, 1874, the above-named complainant, who was a minor, and resided in the state of Alabama, by his guardian and next friend, Henry C. Hart, who is a citizen and resident of Alabama, filed his bill in equity in the 5th Circuit Court of the United States for
143 the southern district of Georgia, against Francis A. Jones, as executor of M. D. Jones, dec'd, George O. Warnock, William Warnock, James Gains, Charles J. Miller, Edward D. Boit, Robert A. Boit, and William A. McKenzie, all of which defendants were citizens of and residing in the said southern district of Georgia, except W. A. McKenzie, who was a resident and citizen of the state of Alabama.

And in said bill in equity it was set forth and alleged substantially as follows: That in January, 1859, Drury Corker, the father of complainant, who resided in Burke county, in Georgia, died leaving a will, and leaving surviving him his wife, Sarah D., his daughter, Sarah C., wife of Henry C. Hart, and the complainant, who was at that time about three years old. That the will was duly probated in Burke county, with the said Malcom D. Jones and John W. Carswell and Henry C. Hart as executors, no one of whom actively discharged the duties of executor except Malcom D. Jones, who died in Burke county in September, 1869, leaving a will, under which the defendant, Francis A. Jones, duly qualified as executor in November, 1869, and from which trust he has never been discharged. That by the last clause of the will of said Drury Corker and M. D. Jones was made guardian of the person and property of the com-
144 plainant and appellant, and that said M. D. Jones duly qualified as such, and that John W. Carswell and Henry C. Hart were in said will made trustees of such part of the estate of Drury Corker as was bequeathed to Sarah C., the wife of Henry C. Hart, and that she died on the 7th Feb'ry, 1864.

That from the death of his father, in 1859, complainant continued to reside with his mother on his place bequeathed to him by the 5th item of his father's will, until the 4th day of January, 1869, when his mother died, and he soon afterward went to live in Alabama with said Henry C. Hart, who was duly qualified as the guardian of his person and property by the Probate Court of Barbour county, Alabama, which appeared at the hearing by a duly certified copy of the appointment.

That the said M. D. Jones, executor and guardian as aforesaid, made no return to the ordinary of Burke county, as executor of Drury Corker, later than January, 1861, at which time there was due from him as such executor $3,434.39½, as was made to appear at the hearing by certified copies of the record from the court of ordinary of Burke county; and that the whole of this sum belonged to the appellant, as his sister, Mrs. H. C. Hart, had been settled with under the terms of the will of their father, Drury Corker.

That said M. D. Jones, as guardian, had in his hands five
145 shares of the capital stock of the Augusta and Savannah Railroad, which had been left to complainant by the 5th item

of said will of Drury Corker; and that said stock had increased to seven shares, and that M. D. Jones had in his lifetime collected the sum of $233.08 as dividends on said seven shares of stock, which appeared by a certified transcript from the railroad books, signed by the president of the r'y and admitted in evidence without objection at the hearing, complainant's counsel relinquishing any further claim to the stock itself, which it was announced had been secured for complainant outside of this suit.

That the said M. D. Jones, as guardian of complainant, made no return to the court of ordinary of Burke county later than for the year 1863, at which time, as was shown at the hearing by duly certified transcripts of said return, the said guardian had apparently brought complainant in debt to the guardian in the sum of $14,962.98 in Confederate money. And that, in fact, said returns exhibited an indebtedness of said guardian to complainant in a large sum of money, as will more fully appear by reference to the amended bill hereinafter to be set forth.

That in the 4th item of said will of D. Corker a tract of land known as the Gilstop and Watson place, lying in said Burke county, and containing about twelve hundred acres, of the value of
146 ten thousand dollars, or other large sum, was bequeathed to complainant's sister, Mrs. S. C. Hart, and that said tract of land was sold by the trustees of Mrs. Hart to complainant through his said guardian, M. D. Jones, about the 24th July, 1863, for $15,600 in Confederate money, as was made to appear at the hearing by a duly certified copy of the deed from said trustees to complainant's guardian. And that this sum of Confederate money as paid for said land was alleged by said guardian to have been advanced for complainant out of his own funds; and that even if it were so advanced by said guardian, that it was worth, on 24 July, 1863, only about the amount of $1,200 in gold coin, which last-named sum was a much smaller amount than that the said M. D. Jones, both as executor and guardian as aforesaid, then had in his hand belonging to complainant.

That at the time of the said alleged advance of Confederate money, in July, 1863, by said M. D. Jones, for the purchase for complainant of the said Gilstrap and Watson place, there was in the possession, custody, and control of said M. D. Jones, *as guardian*, besides the sum of $5,434.39½ in good money, about one hundred and thirty-four bales of upland cotton, which had been raised on the plantation of complainant left him in his father's will,
147 after the death of his said father, Drury Corker, out of which cotton said M. D. Jones stated he would reimburse himself for the said advance of Confederate money which he alleged was from his own funds, and that said M. D. Jones failed to dispose of said cotton, but allowed it to remain on the place of complainant until it was destroyed by the Federal troops in the latter part of 1864.

That in the year 1867, while complainant was about eleven years

old, and residing in the country with his mother, the said M. D. Jones, who the proofs showed was a lawyer and a man of large means, and who was then largely indebted to complainant, induced the mother of complainant, Mrs. Sarah D. Corker, to get one Stephen A. Corker to file a bill in her name as mother and next friend of complainant, against M. D. Jones, as the guardian of complainant, on the equity side of the Superior Court of Burke county, Georgia, in which said bill, through the direct imposition and misstatement of the said M. D. Jones, it was alleged that the estate of complainant was largely indebted to said M. D. Jones for his said alleged advance of fifteen thousand and six hundred dollars of Confederate money to purchase said Gilstrap and Watson place—which place is now and was then of about the value of ten thousand dollars—and for other
148 expenditures legally made by said M. D. Jones as guardian, and praying that the title to said Gilstrap and Watson place be decreed to be divested out of said complainant, and that it vest in said M. D. Jones. To which said bill said M. D. Jones filed an answer admitting the allegations, which he had procured to be made, and consenting to the prayer. Whereupon, at the November term, 1867, of said Burke Superior Court, a jury found a consent verdict, upon which the court, as chancellor, made a decree in compliance with the prayer of said bill; all of which was made to appear at the hearing from the admissions in the answer of the defendants. The proofs and certified copies from the said Superior Court so purporting to divest his title in said Gilstrap and Watson place and convey it to his said guardian, M. D. Jones, was absolutely collusive, fraudulent, and void in law, having been rendered upon an assumed and false statement of facts and by a court totally without jurisdiction in the premises.

That after the death of said M. D. Jones in 1869, the said defendant, Francis A. Jones, or his executor, took possession of the said Gilstrap and Watson place as part of the estate of said M. D. Jones, and proceeded to sell it in three separate parcels, on the day of October, 1873, viz.: Lot number 1 of said place was sold
149 to George O. Warnock for $1,854; lot number 2 was sold to William Warnock and James Gains, for $1,005.12½, and C. A. Rowland was substituted instead of James Gains; and lot number 3 was sold to Charles J. Miller for $2,188.90, and that said Rowland afterwards sold his interest to one Samuel W. Wynne, who has been made a party defendant, but has suffered a decree *pro confesso* to be taken against him.

The bill then concluded with the usual prayer.

In February, 1875, the defendants F. A. Jones, George O. Warnock, William Warnock, James Gains and Charles J. Miller all answered the bill, the answer of F. A. Jones being separate, and substantially as follows: That he did not know who qualified under the will of said Drury Corker as executor, or if said M. D. Jones was the only one who entered upon the discharge of such duty as executor; nor if, by the last clause of said will, said M. D Jones was made

testamentary guardian of said complainant, Ernest D. Corker; nor knows of any facts connected with the will of said D. Corker, or when or where Henry C. Hart qualified as guardian of complainant; that he does not know whether said M. D. Jones, as executor of said Drury Corker, made returns to the court of ordinary, or
150 was indebted as such executor to said estate, or ever settled with Sarah C. Hart, believing and being informed that said M. D. Jones was not indebted in any amount to the estate of Drury Corker, and that as to the shares of railroad stock, no such stock was found among the assets of M. D. Jones.

That he does not know if M. D. Jones, as guardian of Ernest D. Corker, failed to make his returns since 1863 to the ordinary of Burke county, but if it be true that said returns were made for year 1864 it was because of the war between the states, and that the return up to 1863, by which it was shown that the complainant was indebted to his guardian, M. D. Jones, in the sum of $14,962.98, were complete, accurate and true.

That to the best of the knowledge and belief of said F. A. Jones, said M. D. Jones, in purchasing said Gelstrop & Watson place, advanced *bona fide* out of his individual means the sum of $15,600 to pay for said place, said amount being over and beyond any indebtedness to said complainant by F. A. Jones, as guardian or otherwise; and defendant denies that said M. D. Jones ever promised or undertook to reimburse himself for said advance out of one hundred and thirty-four bales of cotton mentioned in complainant's bill, or ever took the same in payment, or was guilty of any negligence
151 in failing to sell or dispose of the same, or allowing it to remain on complainant's place until destroyed by the Federal troops in 1864. And, on the contrary, the defendant says that in 1863–4 he was put in charge of said cotton by said Malcom D. Jones, as guardian of complainant, said M. D. Jones being at the time disabled from looking after the same individually; that to the best of his recollection he then took charge of a greater number of bales of cotton than is mentioned in said bill of complaint, and is sure that the cotton up to the time of its destruction was kept separate and distinct, as being the cotton of complainant, from that kept by defendant, as the cotton of M. D. Jones, and that good care was taken of all.

That M. D. Jones had 600 bales of his own cotton destroyed by the Federal army at the time of the destruction of complainant's; and that during three years, as during the whole war, it was not considered well to dispose of cotton for Confederate money, such money being very plentiful, and the only currency for which cotton could be sold, and in keeping the cotton said M. D. Jones acted for the best interest of complainant.

That there was, to his knowledge and belief, no collusion between said M. D. Jones and the mother of complainant with regard to the proceedings in the equity court of Burke county, by which the title

to said Gilstrop and Watson place was vested in said M. D.
152 Jones; but, on the contrary, believe that there was no such collusion, and that the proceedings in equity were fairly and squarely conducted and regular in every particular; defendant denies all fraud, and says the proceeding in equity and the decree were binding upon complainant.

That it is true George O. Warnock purchased lot No. 1 of the Gilstrop & Watson place for $1,854.00, and that he paid in cash $1,000.00, and that no title deeds have been executed to him, but says that title deed have been made of lot No. 2 to William Warnock and James Gains, and that the purchase-money has been paid. Denies that he ever admitted that anything was due to complainant, but states that between two and three thousand dollars is due by complainant to him as executor of M. D. Jones.

That on the death of M. D. Jones he took possession of the Gilstrop & Watson place as the property of M. D. Jones, and that no claim was made thereto by complainant or his guardian, or any notice given of any intention on the part of complainant to claim any interest in said place, and in pursuance of his duties as executor in winding up the estate of said M. D. Jones, which was insolvent, he sold said Gilstrop & Watson place by an order of the Superior Court of Burke county, made in equity on the 8th day of July, 1873, such
sales being made to the parties as alleged in the bill of com-
153 plaint, who were innocent and *bona fide* purchases for value without notice, sale being made at public outcry before courthouse door of Burke county under the decree, a copy of which is annexed to the answer as "Exhibit A."

That complainant is barred by the statute of limitation, and that the decree of the court in Burke county, whereby the titles to said Gilstrop & Watson place were vested in said M. D. Jones, is binding upon complainant, and cannot be attacked collaterally. And defendant generally denies all allegations of the bill not specially confessed, &c.

The defendants, George O. Warnock, William Warnock, James Gains, and Charles J. Miller filed a joint answer, substantially stating as follows:

That they had never heard or been informed save by complainant's bill as to what were the respective rights of the family under the will of Drewry Corker, but that they believe the facts to be true as are stated in the bill. And of these defendants believe and admit as true that under the last clause of the will of D. Corker, Malcom D. Jones was made guardian and trustee of the property of complainant, and that John W. Carswell and Henry C. Hart were made trustees of the property bequeathed to Sarah C. Hart, and
that the tract of land known as the Gilstrop & Watson
154 place was sold by said trustees of S. C. Hart about 24 July, 1863, but deny that the titles were made to complainant, or that $18,000 was paid for the land, and allege that the titles were made to M. D. Jones as trustee for complainant, and the

price paid was $14,000 in Confederate money. That they knew nothing, save from hearsay, and that since filing of the bill, as to the state of accounts between the executor of M. D. Jones and the complainant; and until filing of the bill knew nothing of the matters and things therein stated concerning the transfer of the title from complainants to his guardian, M. D. Jones, and they make substantially the same allegations concerning these matters as are made in the answer of F. A. Jones. Defendant George O. Warnock says that he purchased lot No. 1 for the sum of $1,854, and that he paid $1,000 cash, and that no titles were made to him; and that he has refused to pay the balance of the purchase money because he was notified by the solicitor of complainant that this suit would be brought.

Defendants William Warnock and James Gaines say that they purchased lot No. 2 for $1,005.12½, and that title to 97 acres of said lot were made to William Warnock, and titles to the remainder were made to C. A. Rowland for benefit of said Gaines, Row-
155 land having advanced the purchase money. All defendants say they were *bona fide* and innocent purchases for value without notice actual or constructive, &c.; and they set up the same decree alluded to and made an exhibit in the answer of F. A. Jones.

That the decree of Burke Superior Court vesting the title of Gilstrop & Watson place in M. D. Jones individually was valid and without fraud or collusion; and that the matters and things in complainant's bill can be tried by an action of ejectment.

Afterwards, at the April term, 1879, of the Circuit Court of the U. S. for southern dist. of Ga., complainant amended his bill by making C. A. Rowland and Samuel W. Wynne party defendants, by dismissing the bill as to Edward D. Boit, Robert A. Boit, and William A. McKenzie, and complainant having attained the age of 21 years, by letting the bill proceed in his name alone.

And in the amendment complainant made the following additional allegation: That the amount of $14,962.98 debited to complainant by the returns of M. D. Jones as guardian up to 1 January, 1861, and by transactions in Confederate money, and that into said account there did not enter as a credit to complainant an indebtedness of
156 $1,332.28 in good money which was due complainant by his guardian for transactions during the year 1860.

The answer of defendant Rowland was substantially about as were those of the other defendants, except that Rowland states that he went into possession of the part of said Gilstrop and Watson place for which he had paid the purchase money and received the titles about the 1 January, 1874, and so remained until about the month of April, 1877, when he conveyed the same by quit claim to Samuel W. Wynne.

The defendant Wynne made no answer, and a decree *pro confesso* was taken against him.

At the April term, 1880, of said Circuit Court, the cause came on to

be heard, and was heard upon the pleadings and the following proofs:

For complainant.—(1) The certified copy of the will of Drewry Corker. (2) And the certified copy of the verdict and decree of the Superior Court of Burke county in the case of Ernest D. Corker, by his mother and next friend, ag'st Malcom D. Jones, guardian of E. D. Corker, both of which were attached to the original bill. (3) Certified copy of the return of ordinary of M. D. Jones, executor, &c., made to the court of Burke county. (4) Cer-
157 tified copy of the returns of M. D. Jones, guardian of complainant, made to court of ordinary of Burke county. (5) Original letters testamentary to the executors of the estate of Drewry Corker, issued by ordinary of Burke county. (6) Certified copy of the letters of guardianship, issued to Henry C. Hart, upon the person and property of complainant by the Probate Court of Barbour county, Alabama. (7) Certified copy of the deed from trustees of Mrs. Sarah C. Hart to M. D. Jones, as guardian of E. D. Corker, the complainant. (8) Certificate from the clerk of the Superior Court of Burke county as to records in equity causes. (9) Certificate of ordinary of Burke county as to order of allowing investment in lands. (10) Certificate of Henry Hull, pres't, &c., as to railroad stock dividends paid M. D. Jones, ex'or, &c. (11) Barbour's tables in 34 Ga., p. 487, case of McLaughlin & Co. *v.* O'Dowd, showing values of Confederate money. (12) Depositions of Emanuel Heidt.

The defendants introduced as their proofs: (1) Depositions of Stephen A. Corker. (2) Depositions of John W. Carswell. (3) Depositions of defendant Francis A. Jones. (4) Certified copy of the decree attached to answers of defendants as an exhibit.

This appellant, the complainant, Ernest D. Corker, shows that after consideration of all the pleadings, the exhibits and proofs
158 in the said cause, the fifth Circuit Court for the southern district of Georgia, at the April term, 1880, did, on the 30th day of April, 1880, during said term of court, render the following decree:

In the fifth Circuit Court of the United States for the southern district of Georgia, April term, 1880.

ERNEST D. CORKER, complainant,
and
FRANCIS A. JONES, ex'or of MALCOM D. JONES et al., defendants. } In Equity.

This cause came on regularly to be heard and was heard upon the bill and amendments to bill, the answers, exhibits and proofs, and after argument and due consideration thereof, it is thereupon ordered, adjudged and decreed that nothing appears to impeach the titles of the defendants to the premises described in said bill as the

Gilstrop and Watson place; that the complainant has no title to, interest in, or claim to said premises. And as to all of the defendants except Francis A. Jones, ex'or of Malcom D. Jones, the said bill is dismissed, with costs to said defendants, and said defendants shall go hence without day. And it is further ordered, adjudged and decreed, as to Francis A. Jones, executor of Malcom D. Jones, that he is not, as such executor, nor was the said
159 Malcolm D. Jones, indebted to the complainant, either as executor of the estate of Drewry Corker, or as guardian of complainant, save and except as to the sum of two hundred and thirty-three 2-100 dollars, received by said Malcom D. Jones as executor of Drewry Corker, and for which he is liable to account as guardian of complainant, being dividends received from the five shares of stock mentioned in said bill; the complainant admitting through his solicitors that he had recovered the five shares aforesaid, together with accumulated dividends thereon, except said sum of two hundred and thirty three 0-100 dollars, for interest to April 27, 1880, and 7 per cent. interest on said sum till payment.

And as to said two hundred and thirty-three dollars and interest, it is ordered, adjudged and decreed that complainant do recover the same, but without his costs in this behalf expended, and have execution therefor, to be levied of the goods and chattels, lands and tenements, of Malcom D. Jones in the hands of said Francis A. Jones, to be administered with liberty to complainant, should a return of nulla bona be made on said execution, to have execution issued, to be levied on the goods and chattels, lands and tenements, of Francis A. Jones individually, unless he shows a deficiency of assetts of the estate of Malcom D. Jones, according to statute
160 of Georgia in distribution of assetts, to pay said execution by rules day in June next.

W. B. WOODS,

April 80, 1880. *Judge.*

Wherefore, inasmuch as the amount involved and the value of the land sought to be recovered by appellant exceeds the sum of five thousand dollars ($5,000) in value, this appellant within the period allowed by law appeals from the whole of said decree of said Circuit Court (except that portion allowing the sum of $233.08 with interest to appellant against said defendant F. A. Jones as executor, &c.), and prays that said decree of said Circuit Court on the bill, amended bill, answers, pleadings, depositions, proofs, and proceedings in said cause may be sent to the Supreme Court of the United States, and that said Supreme Court will proceed to hear said cause anew, and that said decree of said Circuit Court and every part thereof (except as above referred to) may be reversed and a decree made in favor of this appellant, as follows: First. Against the defendant F. A. Jones as executor of M. D. Jones, as guardian, for the sum of money shown to be due under the proofs hereinbefore set forth. Second. Against F. A. Jones, executor of M. D. Jones, ex'or, &c., for the sum found

to be due by the proofs. Third. That the land known as the
161 Gilstrop & Watson place be decreed to belong to appellant; that the deeds made to the defendants by said F. A. Jones, ex'or, &c., and the deed made by C. A. Rowland to S. W. Wynne be declared invalid and to be delivered up for cancellation. And that in all respects such decree may be ordered to be made as to the Supreme Court shall seem equitable and proper.

B. H. HILL,
TOMPKINS & DENMARK,
Solicitors for Appellant.

Service acknowledged of the foregoing petition to the Supreme Court of the United States in said appeal cause, and copy waived, citation also waived, notice admitted, and all further citation and notice waived.

This 11 May, A. D. 1880.

R. R. RICHARDS,
J. V. RYALS,
for Francis A. Jones, ex'or, & for Geo. O. Warnock et al.
W. W. MACKALL,
ROBERT G. IRWIN,
Sol's for Chas. J. Miller.

Who sign this acknowledgement as they did the order allowing the appeal, not knowing whether they are continued as counsel for the parties, but with the intention, if they are continued as such counsel, or have the legal authority to do so, to bind the clients by said acknowledgement the same as if personal service had been effected upon them.

R. R. RICHARDS,
J. V. RYALS,
May 11, 1880. *Sol's.*

162 SAVANNAH, GA., *May* 11th, 1880.

Mess. TOMPKINS & DENMARK,
Sol's for E. D. Corker:

DEAR SIRS: I will be able to let you know on Thursday (13th inst.) whether Mr. Mackall & I am authorized to sign acknowledgement of service, &c., attached to your petition for appeal. Mr. Mackall and I were only employed to argue the case in the Circuit C't.

I have already written to Mr. Rowland's agent to ascertain whether he desires Chisholm & Erwin to represent him further in the case.

Yours truly,
ROB'T G. IRWIN.

(Endorsement:) To the Supreme Court of the United States from 5th Circuit Court of U. S. for southern district of Ga.; Ernest D. Corker, complainant & appellant, and Francis A. Jones, ex'or, &c., et al.; appellee's petition for appeal. Filed May 28, 1880. W. P.

Ward, clerk; B. H. Hill, Tompkins & Denmark, sol's for appellant.

163 *Appeal Bond.*

UNITED STATES OF AMERICA,
State of Georgia, Chatham county.

Know all men by these presents, that we, Earnest D. Corker, by his solicitors, and Hugh M. Comer, of the said county, are held and firmly bound unto Francis A. Jones, George O. Warnock, William Warnock, James Gaines, C. A. Rowland, and Samuel W. Wynne, and each of their attorneys, executors, administrators or assigns, in the sum of five hundred dollars, for which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Signed and sealed at Savannah this the seventeenth day of May, 1880.

Whereas lately, at the April term, 1880, of the 5th Circuit Court of the United States for the southern district of Georgia, in equity, a suit depending in said court between Earnest D. Corker, as complainant, and Francis A. Jones, ex'or, &c., et al., defendants, a final decree was rendered against the said F. A. Jones, ex'or, &c., for a sum of money and in favor of all the other defendants on all the other issues in the cause; and the said Earnest D. Corker having obtained
164 and been allowed an appeal to the Supreme Court of the United States, which has been duly filed and served according to law, to reverse the said decree rendered against him as aforesaid, and citation having been duly served upon the said Francis A. Jones, executor, &c., and all the other defendants above named, to be and appear at the next term of the Supreme Court of the United States, to be held at Washington, D. C., on the 2d Monday in October next:

Now, the condition of the above obligation is such, that if the said Ernest D. Corker, complainant and appeallant, shall prosecute his said appeal to effect and pay all sums that may be adjudged against him, and also pay all costs that may be decreed against him, and just damages for delay and costs and interest on the appeal if he shall fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

EARNEST D. CORKER, [L. S.]
By Tompkins & Denmark.
H. M. COMER. [L. S.]

Signed, sealed and delivered in presence of—
H. C. CUNNINGHAM,
Not. Pub., C. co., Ga.

Approved and accepted in open court, 17th May, 1880.
JOHN ERSKINE,
Judge.

165 GEORGIA, }
Chatham county, }

Before me, the undersigned, in person came H. M. Comer, who, being sworn, says he is worth the amount of the foregoing bond (in case of Corker, appellant, *vs.* Jones et al., appellees) over and above all his debts, liabilities, and the homestead exemption allowed by the laws of Georgia.

H. M. COMER.

Sworn to and subscribed before me May 17th, 1880.

[SEAL.] H. C. CUNNINGHAM,
Not. Pub., C. co., Ga.

[Endorsement:] In U. S. Circuit Court, so. dist. of Ga. Ernest D. Corker, compl't, and F. A. Jones, ex'or, &c., et al., def'ts. Appeal bond; filed May 28th, 1880; W. P. Ward, clerk.

166 *Clerk's Certificate.*

UNITED STATES OF AMERICA, }
Southern District of Georgia, } ss.

I, Willard P. Ward, clerk of the fifth Circuit Court of the United States of America for the southern district of Georgia, do hereby certify that I have carefully compared the writings annexed to this certificate, and that they are true and correct copies of their respective originals remaining on file and of record in my office, being a full and complete transcript of the record, proceedings, and evidence submitted in the equity cause of Ernest D. Corker, by next friend, compl't, and Francis A. Jones, ex'or, &c., et al., def'ts, as also the proceedings under the amended bill filed by the said complainant, Corker, in this cause, lately pending in said Circuit Court, and appealed by the compl't to the Supreme Court of the United States. And I further certify that the returns of Francis A. Jones, ex'or, showing a deficiency of assets, as called for in the final decree made in this cause, were duly filed on June 7th, 1880, but omitted from the transcript by the express direction of counsel for appellant.

Witness my official signature, and the seal of the said Circuit Cort at Savannah, in said district, this 4th day of October, A. D. 1880, and the 105th year of American Independence.

[SEAL.] WILLARD P. WARD, *Clerk.*

(Endorsement on cover:) S. Georgia. C. C. U. S. No. 229. Ernest D. Corker, appellant, *vs.* Francis A. Jones, executor of Malcolm D. Jones, deceased, George O. Warnock et al. Filed 10th February, 1881.

110-317

In the Supreme Court of the United States.

OCTOBER TERM, 1883.

No. 220. ERNEST D. CORKER, *Appellant*, and FRANCIS A. JONES, GEO. D. WARNOCK, WM. A. WARNOCK, JAMES GAINS, CHARLES J. MILLER, CHARLES C. ROWLAND, SAMUEL W. WYNN, *Appellees.*

Statement of the Case; Assignment of Error, and Brief of Counsel for Appellant.

HENRY B. TOMPKINS, Attorney.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

ERNEST D. CORKER, *Appellant.*
No. 220—*vs.*
FRANCIS A. JONES, executor of Malcolm D. Jones, dec'd.
GEORGE D. WARNOCK,
WILLIAM WARNOCK,
JAMES GAINS,
CHARLES J. MILLER,
CHAS. A. ROWLAND,
SAMUEL W. WYNNE,
Appellees.

Appeal in Equity from the Fifth Circuit Court of the United States for the Southern District of Georgia.

STATEMENT OF THE CASE.

The bill was filed on 14th October, 1874, by Appellant, through his guardian, one Henry C. Hart, both being citizens of and residing in the State of Alabama. Appellant having arrived at the age of 21 years during the year 1877, the said guardian was dismissed from the bill by an amendment made and filed on 28th May, 1879. At the same time the bill was also dismissed as to three of the original defendants, leaving the cause to stand against those whose names are above set forth. At the same date the two defendants, Charles A. Rowland and Samuel W. Wynne, were first made parties to the bill. (Transcript p. 26, 27 and 28, m. p. 51 to 37.)

In January, 1859, one Drewry Corker, father of Appellant, who lived in Burke county, Ga., died testate, leaving a widow, Sarah D., an only daughter, Sarah C., wife of Henry C. Hart, of Alabama, and an only son, the Appellant. Among other provisions of the Will, which was duly probated in Burke county in the Spring of 1859, item 4th demised to Mrs. Sarah C. Hart a plantation, known as the "Gilstrap and Watson" place, containing about 1,200 acres, and lying in the said county of Burke, in the Southern District of Georgia. This land was afterwards sold by the trustee of Mrs. Hart to one Malcolm D. Jones, a lawyer, and wealthy man of that county. Jones subsequently, in 1867, procured the decree of a court affecting to vest the title of this land out of his ward and into Jones individually, and the Bill is mainly directed to the recovery of this property. By the Will of Drewry Corker, Malcolm D. Jones was made the "Guardian of the person and property" of Appellant, who was at the death of his father not three years of age. Henry C. Hart and one John W. Carswell were made trustees for Sarah C., the wife of H. C. Hart, and Malcolm D. Jones, John W. Carswell and Henry C. Hart were made executors of the Will

All three qualified as executors, but M. D. Jones was the only one who ever actively entered upon the duties, and made return to the Court of Ordinary. And Malcolm D. Jones and John W. Carswell were also, by the Will, made trustees for Sarah D., widow of the testator, Drewry Corker.

On the 24th July, 1863, in accordance with the provisions of the Will of Drewry Corker, Carswell and Hart, as trustees for Hart's wife, sold the "Gilstrap and Watson" place to "M. D. Jones, guardian of Ernest D. Corker," for the sum of $15,600 in Confederate money, worth at that time about 12½ for one in gold. (Barber's titles in 34 Ga., p. 487. McLaughlin & O'Dowd.)

Jones took possession, control and management of this place as guardian, and so continued until the 1st day of January, 1868—nearly five years—when he ceased to hold possession as guardian and assumed to hold as of his own right, under the following verdict and decree of the Superior Court of Burke county: (Transcript, page 9, 10 and 11, m. p. 19 to 22.)

ERNEST D. CORKER by next friend vs. M. D. JONES. } Trial by Special Jury.

The jury find that it is to the interest of said Ernest D. Corker, the minor, under his circumstances, that said purchase be rescinded and deed be cancelled and set aside as the said Ernest D., leaving it stand as against the makers and in favor of said Malcolm D. individually; and that if necessary said Ernest D. make and deliver a proper conveyance of said land to said Malcolm D.

WILLOUGHBY BARTON, Foreman.

The court then adjourned until the — day January, 1868.

WM. GIBSON, Judge Superior Court, M. Dist.

EDGAR S. GARLICK, Clerk.

Tuesday Morning, November 24, 1868.

GEORGIA, Burke County } The Honorable Superior Court met pursuant to adjournment.

Present, His Honor Wm. Gibson—Bill for Dis. and Rel., etc.

Ernest D. Corker, minor, by Sarah D. Corker, his mother and next friend, vs. Malcom D. Jones.

Whereas, The jury have found that it is to the advantage of said Ernest D. Corker, minor and complainant, that the purchase for him in deed described in said Bill to said Malcom D., as his guardian, be rescinded and set aside, leaving said deed to stand in favor of said Malcom individually, and set aside and cancelled as to said Ernest D., and that said Ernest D. make conveyance to said Malcom, if necessary, of said land described in said Bill. It is ordered and decreed that said deed be and is hereby set aside and cancelled as to said Ernest D. only, and that it stand good against the makers thereof, and for the use and benefit of said Malcom D. individually, and said Ernest D. make any, all necessary and proper conveyance of the land referred to Malcom D.; that said Malcom D. do pay the one-half of the costs of this proceeding, and said Ernest D. the other half thereof.

WM. GIBSON, Judge Superior Court M. Dist. Ga.

Jan'y. 1, 1868.

This is the marvelous translation of title, from a ten year old boy into his guardian, that this Court will be urged to declare invalid. As shown by the certificate of the Clerk, this verdict and decree were the only evidences of the suit, either of file or spread on the records, that remain or could be found in his office, (Transcript p. 11.)

The Bill was filed by one Stephen A. Corker as Attorney, upon the request made by a note handed him by Malcom D. Jones, and of which he says, speaking of the appellant's mother, "and from the best of my knowledge of her handwrite it was signed by her, in which she directed me as her Solicitor to file a bill in Equity, the object of which was to divest title as to Ernest D. Corker in the Gilstrap place, and to vest title in M. D. Jones individually, who was the guardian of said minor, E. D. Corker, and to provide furthermore that the indebtedness of said minor's estate to M D. Jones should be cancelled; the bill was filed in the name of Sarah D. Corker as next friend of Ernest D. Corker; a decree was rendered accordingly. Witness did not see Mrs. Sarah D. Corker, but does not think there was any fraud in it." [Testimony of Stephen D. Corker for Defendant's below; Transcript p. 64, m. p. 130.]

In February, 1864, Mrs. H. C. Hart died in Alabama, and in September, 1869, Malcom D. Jones died; and in the January before, of the same year, died the mother of Appellant. After the death of his mother, and before the death of M. D. Jones, Appellant was carried to live in Alabama, with his dead sister's husband, Mr. H. C. Hart. Upon the death of M. D. Jones, the said Appellee, Francis A. Jones, became his Executor. (Transcript, p. 14, 15, 16, and 17—m. p. 28 to 34; answer of F. A. Jones, as Executor, etc.)

Up to the time of his death M. D. Jones had been Guardian of person and property of Appellant; sole acting Executor of his father's estate; and Trustee for his mother. He was a lawyer, a wealthy man, and Mrs. Corker, Appellant's mother, was living off in the country with her little boy. [Transcript, p. 41, 1st answer of E. Heidt. Also, p. 62, 2d answer to Cross. Intg., by J. W. Carswell. Also, p. 7, m. p. 14.]

From the year 1859, when Drury Corker died, and M. D. Jones became Guardian, Executor and Trustee under his will, up to the date o Jones' death in 1869—more than ten years—he made no returns to the Court of Ordinary of Burke county, as Guardian, after the year 1864, which last return was made on 7th January, 1864, for the year 1863. (Transcript, p. 58 and 59, m. p. 117 and 118.) And there was no return made as Executor after 1st July, 1861, when the estate of D. Corker had due it, by returns made up to that date, $3434.39½. (Transcript, p. p. 51, 52, 53, 54, and 55, m. p. 106 to 113.) This account is made up as follows:

On July 1, 1859, the Estate owed M. D. Jones as Executor.....		$ 815 22
On July 1, 1860, M. D. Jones as Ex. was due for that year.....	$1258 53	
On July 1, 1861, Ex. was due the Estate for that year.....	2991 08½	
	4249 61½	815 22
	815 22	
Bal. due Estate 1st July, 1861.....	$3434 39½	

It is alleged in the Bill, and not controverted in the Depositions of Frank A. Jones, one of Appellees, and Executor of M. D. Jones, that the

whole of this amount belonged to Appellant, as his sister Mrs. Hart had been settled with under the directions of the Will. (Transcript, p. 9, m. p. 18, Item 11 of the Will.) The reason why there was no return of the executors of Drewry Cooker after the year 1860, was because the estate had been distributed in compliance with Item 11 of the Will. This is also shown by reply of J. W. Carswell to 6 interrogatory of his depositions, (Transcript, p. 62, m. p. 124.)

Then, this whole amount, *in good money*, went into the hands of M. D. Jones as Guardian for Appellant on 1st January, 1861.

Malcolm D. Jones, as guardian for Appellant, made three returns to the Court of Ordinary during his guardianship of over ten years, from probate of Drewry Cooker's will in spring of 1859, to Jones' death in September, 1869. (Transcript, pages 56, 57, 58 and 59, m. p. 113 to 119.) The first of these, sworn to on 1st July, 1861, shows an amount due his ward of $1,332.28.

The second, sworn to 9th February, 1863, claims a balance due guardian—not giving credit for the first amount—$1,634.50. This return states, cotton crops for years 1861 and 1862 not yet sold.

The third, sworn to 7th January, 1864, claims a further balance due guardian of $14,962.98. There enters into the account for the year 1863 a debit against the ward of $15,600.00 for money paid for Gilstrap & Watson place.

If this sum had not been advanced by the guardian, and should be taken out of the accounts, there would have been a balance due the Ward of $344.80, as follows:

Balance due Ward per 1st return.....		$1,332 28
Balance due Ward per 2d return.....	$1,634 50	
Balance due Ward per 3d return, if $15,600 credit upon $14,962.98, stated due guardian.....		647 02
	1,634 50	1,979 20
		1,634 50
Balance due Ward.....		$344 80

And this, without refering to the difference in value of the money in 1860 and 18861 and in 1863 and 1864; without calling the said M. D. Jones to account as executor; and without charging him with the amount of the stock dividends collected and accounted for, and given as a judgment in the decree of the Chancellor. (Transcript, p. 77, m. p. 159.)

The returns of M. D. Jones, as guardian, no where account for the amount of $3,434.39½ shown by his returns as executor, to be due the estate of D. Corker; and even if the Court had granted no decree affecting the Gilstrap & Watson place, yet Appellant should have had a decree for at least $3,778.39 against the executor of said M. D. Jones.

But Appellant contends that there should have been an accounting between the Appellant and the said Appellee, F. A. Jones, and that such an accounting under the evidence, with the proper estimate for Confederate money, would have shown due to Appellant from said F. A. Jones, executor, etc., of M. D. Jones, deceased, a sum far greater than Five Thousand Dollars.

In July, 1873, some four years after the death of Malcolm D. Jones,

his widow Virginia L. Jones, and others, obtained a decree in the Superior Court of Burke county, against Francis A. Jones, as executor, and others; and this decree is set forth in the Transcript on p. 16, and elsewhere. The pleadings, and proceedings, other than the decree itself, seem not to have been recorded or preserved in the Clerk's office. (Transcript, p. 45, m. p. 92.) This decree, the informality of which will be shown further on, is the authority under which the said F. A. Jones, as executor, sold the Gilstrap & Watson place as the property of the estate of his testator. It may be observed that this decree did not appear to have been found after a verdict of a jury on the facts in dispute; nor in pursuance of an Auditor's or Master's report; nor by consent of all parties; (the consent was as to the employment of a surveyor) nor does it specify that the Gilstrap & Watson place belonged to the estate of M. D. Jones, or was to be sold. Further, the sale was to be made under the direction of two Commissioners. The deeds to the lands sold are signed "F. A. Jones, executor, M. D. Jones, deceased. (Transcript, p. 37, m. p. 76.) But it is conceded by counsel that that this would be of no avail to Appellant, if the decree in case of

ERNEST D. CORKER, by
SARAH D. CORKER, next friend, etc.
v.
MALCOM D. JONES

were valid and operated to transfer the title from the ward into his guardian.

[NOTE.—A portion of the certificate of the Clerk of the Circuit Court is as follow: "And I further certify that the returns of Francis A. Jones, executor, showing a deficiency of assets, as called for in the final decree made in this cause, were duly filed on June 7, 1880, but omitted from the transcript by the express direction of counsel for the Appellant."

These returns were directed to be omitted, because they formed no part of the cause heard by the Court below, being filed more than a month after the appeal had been allowed.]

FACTS ESTABLISHED BY THE PROOFS.

First. That when Malcolm D. Jones bought the "Gilstrap & Watson" place on 24th day of July, 1863—advanced and paid $15,600.00 for it in Confederate money—he was then, by his own, and only, returns to the Court of Ordinary, indebted to Appellant in a sum greater than the amount of the Confederate money, even considering it worth dollar for dollar with the funds he had received as executor and guardian; and even considering that one-half the amount ($3,434.38½) which he returned as due the estate, as executor. should have been paid to Mrs. Hart. (Transcript, p. p. 43, 44, 51 to 59, m. p. 106 to 119 and pages—of this pamphlet.) And if the guardian advanced money of his

own, as contended for by Appellees, then it is evident that he had so mixed the funds of his ward with his own as not to be able to tell one from the other..

Second. That before managing to get a rural lady to file a Bill against him in 1867, by an attorney whom she never saw in or about the case, asking to have a large and fine body of land given back to her son's guardian, this guardian, M. D. Jones, endeavored to obtain a manifestly illegal act at the hands of one of the grantors in the deed made to Jones as guardian in July, 1863. See transcript, p. 61, m. p. 123. 2d answer of J. W. Carswell as follows: "The Gilstrap place referred to was purchased by M. D. Jones as trustee of E. D. Corker, from me, as the trustee of Mrs. H. C. Hart, deed made to him as said trustee by Mr. Henry C. Hart, and myself, who was co-trustee for Mrs. H. C. Hart aforesaid. I mention this fact, that after said deed had been made by us, Mr. Malcolm D. Jones asked me on one occasion to change the deed to him, and I refused, because, in my judgment, I could not legally do so after having made the other deed with my co-trustee, Mr. Hart. I do not know that any fraud was intended." * * *

Third. Failing to procure a transfer of title to himself, by a deed which would have been void as against the minor ward upon his moving to have it cancelled, M. D. Jones then conceived, and executed, the scheme of procuring his ward's mother—whose trustee M. D. Jones was, and who lived off in the country with her little boy—to write a note requesting one S. D. Corker to file a Bill for her, as next friend of her child, against the child's guardian asking that the child's title to the Gilstrap & Watson place be vested in M. D. Jones. From the only records that can be found, it appears that this was done. *by consent*, without an accounting, without any ascertainment that the minor was indebted to his guardian; and in the face of the only returns made by M. D. Jones as executor and guardian, showing a large amount due by him to his ward.

BRIEF OF LAW POINTS.

Assignment of error on the decree of the Circuit. Court

Appellant assigns *five* separate grounds of error.

First. Because the Court found only a decree against the said F, A. Jones, executor, etc., for $233.08, when there should have been an accounting, under the proofs, and a far larger decree for Appellant against said F. A. Jones, executor, etc.

Second. Because the Court found and decreed that nothing appears to impeach the titles of the defendants to the premises described in said Bill as the Gilstrap & Watson place; that the Complainant (now the Appellant) "has no title to interest in, or claim to said premises." The decree of the Circuit Court should have been the reverse.

I. The decree of the Superior Court of Burke county was illegal and, if not void, certainly voidable by Appellant.

(*a.*) Because there was no *guardian ad litem* appointed to represent the Appellant in a suit wherein his interests were adverse to those of his regular guardian, M. D. Jones, and in a suit nominally against the guardian but really for his benefit.

Code of Georgia, §§ 1821, 4224, 2428.

13 Georgia, 24; Groce v. Field.

Ibid, 467, Nicholson v. Wellborn.

Sec. 1821 is as follows: "Whenever any minor is interested in any

litigation pending in any court in this State, and has no guardian, or his interest is adverse to that of his guardian, such court shall have power to appoint a *guardian ad litem* for such minor, which guardian shall be responsible to such minor for his conduct in connection with such litigation, in the same manner as if he were the regularly qualified guardian."

In 13 Ga., p. 31, the Court says: That an infant can be sued in equity there is no doubt—upon the idea that he is in the hands then of his paramount guardian. Chancery, it is presumed, will do no harm to its peculiar beneficiary. The course seems to be to serve the infant when there is a regularly appointed guardian. The infant cannot defend, nor can his guardian, but the Court will appoint a guardian *ad litem* to defend for him. * * In this case the infant appears to have been served, but no guardian *ad litem* appointed. Notwithstanding, the Court proceeded to decree against him. He was not before the Court; he was without his day, and the decree was erroneous."

So, no matter whether the infant is upon the pleadings as complainant or defendant, he cannot be decreed *against* without a guardian *ad litem;* certainly not when the decree is in favor of his testamentary guardian.

(*b.*) The ward having a regular testamentary guardian of person and property, he must be represented by *guardian ad litem*, appointed by the Court, and not simply by a next friend, in all suits wherein the rights or interests of the guardian and ward are to be passed upon.

1. Daniel Ch. Prac. (5. am. Ed.) p. 69. 1 Sey. Sale v Sale, 1. Beav: 586. 2 Beav: 460.

II. Because, even if a *Guardian ad litem* had been appointed, or could be dispensed with, the Superior Court as a Court of Chancery, or otherwise, had no jurisdiction in the premises. The most that could be contended for by the Defendants below, and Appellees here, was that the *corpus* of the Ward's *real* estate had been used for his benefit.

(*a*) The Court of Ordinary of Burke county could alone effect such purpose.

Code of Georgia, §§1824, 1828, and 331; parapraghs 4, 10, and 11.
60 Georgia, 679. Wells vs. Chaffin.
Ibid, 403. Knapp vs. Harris.
55 Georgia, 21. Branch vs. DuBose.
Ibid, 92 and 93. Speer vs. Tinsley.
8 Georgia, 236 and 244. Worthy vs. Johnson.
65 Georgia, 233. Howard vs. Tucker.

In 60 Ga., on p. 403, the Court holds: "Equity may, in some cases, interfere with the administration of the estates of deceased persons, or direct the management and disposition of property belonging to minors; but, generally, executors, administrators and guardians are to resort to the Court of Ordinary for orders of sale, and such judgments as are necessary to supplement their general powers. If lawful debts are to be paid, and a sale of land for that purpose is needed, leave to sell is usually to be obtained from the Court of Ordinary, and not from a Court of Equity. This is now, and has long been, the system established in this State by statutory provisions."

6 Hill, (N. Y.) 415.
8 Howard, 495 and 556. Williamson vs. Berry.
3 Howard, 750. Lessee of Hickey vs. Stewart.

Bispham's Principles of Eq.; §549; note 5.
Leading Cases in Eq.; vol. 2, pt. 2, p. 1504 and 1506.
Schouler's Domestic Relations; §452.

(*b*) Courts of Ordinary in Georgia, as to Guardianships, and Decedents' estates, are not of limited but of general, and often exclusive jurisdiction.

Code of Ga., §331.
13 Ga., 1. Tucker vs. Harris.
14 Ga., 27. Perkins vs. Attaway.
18 Ga., 526. Woods & Morris vs. Crawford.
27 Ga., 17. Slade vs. Street.
47 Ga., 195. Davis vs. McDaniel.
50 Ga., 235. Patterson vs. Lemon.
(See this case especially.)
56 Ga., 436. Davis vs. Howard.
60 Ga., 398. Knapp vs. Harris.
61 Ga., 453. Cook vs. Rainey.

97 U. S. Reports, p. 369. Telegraph Co. vs. Davenport. Note 1, on page 373.

In this case, on p. 373, the Court says: "Neither the Guardian, nor the children while they were minors, were competent, even by the most formal act, to authorize a transfer and sale of the property. Under the statute of Ohio the intervention of the Probate Court was essential to such proceeding."

Section 524 of the Revised Statutes of Ohio (1880) provides for the exclusive jurisdiction of Courts of Probate. Section 525 qualifies this by conferring concurrent jurisdiction in the sale of lands only. The Code of Ga. §§ 331, par. 4 and 10, and 1824, 1828, confers the same "original, exclusive and general jurisdiction" upon Courts of Ordinary; and *excludes* any concurrent jurisdiction as to sale of lands.

(c.) No Court other than that of Ordinary can, in Georgia, order a sale of the property of a minor ward.

Code §§ 331, 1824, 1828.
50 Ga. 235. Patterson & Lemon.
55 Ga. 21. Branch & DuBose.
65 Ga. 323. Howard & Tucker.

In this case, p. 324, the Court says: "Real estate belonging to a ward must be sold according to law, and in no other way. Code §1828."

And no sale of property held by a guardian can be sold otherwise than at public outcry, after due advertisement. Code of Ga , §§ 1828, 2554, 2555, 2559.

(d) The effect of the transfer of the ward's land by the Court of Chancery, was as if it had been foreclosed upon and set over to the guardian in satisfaction of a lien upon it held by the guardian No such lien can be created by the laws of Georgia.

Code of Georgia, § 1837.

59 Ga , 637 and 8. Rice & Paschal.

(e) So, if the effect of the decree was to transfer the title to the guardian, *as if* a sale had been made and the land purchased by the guardian; still such sale is voidable at the suit of the ward. 30 Ga 780, 793. Shine & Redwine.

2d Johnson Ch. 252.

3 Howard 333 Oliver & Williams and Piatt.

4. *Ibid* 508. Michoud & Girod

Rorer on Judicial sales, §§ 398, 413, 414, 415, 417, 419 and 784.

(f) If the transfer was not effected by a *sale*, but was a mere *barter*, by the Court decreeing an exchange of the land for an indebtedness, then the transfer is void. Rorer on Judicial sales, § 76.

(g) Beyond all this, the proofs show that the proceeding in the Superior Court was a legal fraud:

Code § 3173, 3177, 3178.

Freeman on Judgment, § 250.

3 Cla. & F. 516.

These sections of the Code above referred to are as follows:

Section 331. "Courts of Ordinary have authority to exercise original, exclusive and general jurisdiction of the following subject matter:

* * * * * * * *

4. The sale and disposition of the real property belonging to, and the distribution of, deceased persons estates. * *

10. Of all such other matters and things as appertain or relate to estates of deceased persons. * * * * *

11. Of all such matters as may be conferred on them by the constitution and laws."

Section 1824. "Every Guardian shall be allowed all reasonable disbursements and expenses suitable to the circumstances of the orphan committed to his care But the expenses of maintenance and education must not exceed the annual profits of the estate, except by the approval of the Ordinary previously granted. The Ordinary may, in his discretion, allow the *corpus* of the estate, in whole or in part, to be used for the education and maintenance of the ward."

Section 1823. Provides for the making of returns by the Guardian, and the allowance and approval of the same by the Ordinary.

Section 1828. "All sales of any portion of the property of the Ward shall be made under the direction of the Ordinary, and under the same rules and restrictions as are prescribed for sales by administrators of estates." [By secs. 2559 and 2560 the sales of land made by administrators must be after due advertisement for leave to sell for four weeks, and then again the sale takes place after further advertisement as for Sheriff's sales. See *infra*, secs. 3646, 3647.]

Section 1837. "The Guardian cannot borrow money and bind his Ward therefor, nor can he, by any contract, other than those specially allowed by law, bind his Wards' property, or create any lien thereon."

The contracts, "specially allowed by law," which can be made by the guardian relating to the ward's estate, are as follows: Sec. 1829, "Every renting of land of an orphan, unless by special order of the Ordinary, shall be in public to the highest bidder, and under the same rules as to sheriff's sales, except that credit may be given on good security."

[Sec. 3646 of the Code, provides that sheriff's sales shall be, "on the first Tuesday in each month between the hours of 10 a. m. and 4 p. m., and at public outcry." Sec. 3647 provides that all sheriff's sales of lands shall be advertised in a newspaper weekly for four weeks, before the day of sale.]

Sec 1830: "Guardians may make contracts for labor or service * * * for the benefit of the estates of their wards, upon such terms as they may deem best, and all such contracts made in good faith shall be a charge upon and bind said estates whenever the same are approved by the Ordinary of the county."

Sec. 1831: "Guardians, under a like order, may keep such persons together, and have them employed in such agricultural or other operations as such Guardians may deem manifestly expedient."

Section 1832: "When it is manifestly expedient Guardians, under an order of the Court of Ordinary, may cause plantations of their Wards to be managed and cultivated for their benefit."

Section 1833: "Any Guardian, in his discretion, may invest any funds of his Ward in his hands in stocks, bonds, or other securities issued by this State. In every such case his return shall set forth the time of such purchase, the price paid, and the name of person from whom pur-

chased. All such investments shall be free from taxation during the minority of the ward for whom they are held."

Thus it is seen that the only contract capable of being made by the Guardian, except under order of the Ordinary, is to purchase certain securities, and then to make to the Ordinary a full return of the transaction.

By the Constitution of Georgia adopted in 1865—art. 4, sec. 5—an officer specially known as an Ordinary, with certain defined powers, was first established in this State. Before that time the State Constitution provided for the duties and powers of the Ordinary to be exercised by the Justices of the Inferior Court in each county. The sections of the Code, 331, 1824 and 1828, above set forth, were codified as early as 1863, when the first Code went into operation, from statutes none of which were passed later than 1855.

III. (a) Testamentary guardians are upon the same footing as those appointed by the Ordinary.

Code § 1804

(b) The proofs showing nothing due from the ward to the guardian, according to the guardian's own returns; the presumption of law is that only the income of ward's estate was requisite for his support.

Code § 1824.

55 Ga. 91, (sec. 4.) 92, (3) Speer & Tinsley.

So, "if he purchases in his character as guardian, he presumably uses his ward's funds for that purpose."

Schouler on Domestic relations, § 348.

If, however, the purchase of the Gilstrap & Watson place by M. D. Jones for the ward had been shown to have been done with the money of Jones, yet the title would have vested in the minor. "It is a general principle that acts done by a guardian without authority will be protected, and will bind the infant, if they turn out eventually beneficial to the latter; but the guardian does such acts at his own peril. Schouler on Dom. Rel., §348.

If the ward had in any way become indebted to his guardian, the Code of Georgia points out the only method by which such indebtedness should be arrived at and settled, and for this purpose confers exclusive jurisdiction upon the Court of Ordinary.

Sec 1837 provides for the citing of the guardian by the ward to appear and settle before the Ordinary.

Sec. 1840 says: "The guardian shall in like manner be allowed to cite his ward, or a new guardian, to appear and be present at a settlement of his account."

Sec. 1841: "Upon the return of such citation the Court shall proceed to examine all the returns and accounts of such guardian; to hear all evidence which may be produced by either party; and so make a full, fair and final settlement between such guardian and his ward, making a full record of such settlement."

IV. (a) The exemplifications of records from Court of Ordinary were properly admitted in evidence by the Court.

6 McLane, 24.
95 U S. 420. Turnbull & Payson.
48 Ga. 554. Johnson & Janes
55 Ga 91 (2.) Speer & Tinsley.

(b) Returns being approved by Ordinary are *prima facie* correct.

Code § 1823.
5 Ga 29. Brown vs. Wright.
15 Ga. 451. Rolfe vs Rolfe
45 Ga. 520. Napier vs. Jones.

The returns being correct the ward did not owe his guardian anything for the Gilstrap & Watson place when the guardian procured the filing of the bill.

Third Because the Court failed to find and decree that the defendants who now have possession of and claim to own the said Gilstrap and Watson place, acquired no title to or rights over said lands, as against Appellant, by reason of the purchase at the judicial sale under the decree in the case of Virginia L. Jones, et al., vs. Francis A. Jones, Executor, et. al.

If the title of the Appellant was not divested by the decree in case of E. D. Corker by next friend, vs M. D. Jones, Guardian, &c.; then, the Defendants being purchasers at a judicial sale, the doctrine of *caviat emptor* applied and they are not protected.

Code of Georgia, §2622.
8 Ga., 236. Worthy vs. Johnson.
8 Howard, 548. Williamson vs. Berry.

This case says: "In any sale under a decree or order in Chancery, the purchaser, before he pays his money, must not only satisfy himself that the title to the property to be sold is good, but he must take care that the sale has been made according to the decree or order."

Sale made under direction of Court v. Jones, 1. 22. m. 1. 44. 45.) it was valid only when confirmed by the Court.

Fourth. Because the Court did not find and decree that the title to the whole of the Gilstrap and Watson place, as set forth in the plead-

ings, was in the Appellant, and did not belong to Defendants, or either of them. And that the deeds held by the defendants should be delivered up for cancellation.

Fifth. Because the Court did not find and decree that the Appellant should be put into possession of the said Gilstrap and Watson ; then direct an accounting before a master as to the amount profits that were due to Appellant from the Defendants, other said F. A. Jones, for their use and occupation of said property.

Henry B. Tompkins,
Counsel for Appellant

SUPPLEMENT.

Under II (c) on p. 9.

Courts of Chancery, neither in England nor in America, have any inherent, original jurisdiction over the sales of infants' estates. Such power is derived entirely from statute.

2 Jennison's Ch. Prac., p. 626.
2 Kents' Com., M., p. 230; note (a.)
2 Vesey, Sr., 23. Taylor *v.* Phillips.
1 Vesey, Sr., 461.

In Georgia chancery jurisdiction embraces generally the same matters as were allowed and practiced in England.
Code of Ga., § 3100.

It has been seen that the statutes in Georgia have conferred the jurisdiction to sell the real estate of infants exclusively upon the Court of Ordinary; and that to divest title out of a minor ward the sale must be conducted in accordance with certain prescribed forms.

AS TO MATTERS IN PROOF.

Cotton in Hands of Guardian.

When M. D. Jones bought the Gilstrap & Watson place in July, 1863, he paid for it $15,500 in Confederate money, worth then $1,248.00 in gold. (Transcript of record, p. 58; m. p. 116.)

At this time he had in his possession 130 bales of cotton, which at 500 lbs. per bale, and at 10 cents per pound, were worth $6,500.00 in gold. This cotton Jones stated that he held to reimburse himself for the Confederate money which he paid for the land.

(Transcript of record, pp. 41 and 42, m. pp. 84, 85, and 86. Answer of Heidt; and pp. 61 and 62, m. pp. 123 and 124. Answer of Carswell.)

LANDS OUT OF BURKE COUNTY UNDISPOSED OF BY EXECUTOR.

(Transcript of record, p. 6; m. p. 12; 1 item of will.)

GILSTRAP AND WATSON'S PLACE WORTH OVER FIVE THOUSAND DOLLARS.

(Transcript of record, p. 34; m. p. 68. Answer of C. A. Rowland, one of appellees.)

TO WHOM SOLD AND HOW PAID FOR.

The 1200 acres were divided into three lots.

Lot No. 1 was sold to Geo. O. Warnock for $1,854.00. He paid on it $1,000.00, and has only bond for titles, and is due F. A. Jones, executor, &c., $854.00, with interest.

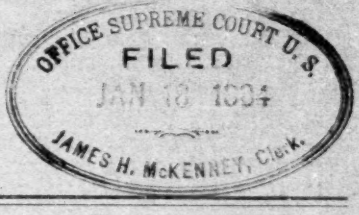
(Transcript of record, p. 16; m. p. 32; p. 20; m. p. 40, p. 34, m. p. 69.)

Lot No. 2 was sold to William Warnock and James Gains for $1,005.12, and paid for, and title given. (Same pages of transcript.)

Lot No. 3 was sold to Charles J. Miller for $2,188.90, and never paid for, nor title given. (Same pages of transcript.)

Thus titles were only made to one lot of 365½ acres, and there is still due on the other two lots $3,042.90.

110-317



IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883,

No. 220.

ERNEST D. CORKER,
Appellant

vs.

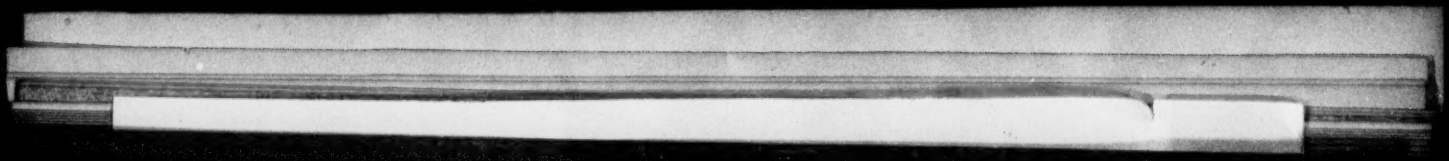
FRANCIS A. JONES,
Executor OF MALCOLM A. JONES, *Deceased*, GEORGE O. WARNOCK, ET AL., *Appellees.*

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA

Argument and Brief of Randall Hagner,

Solicitors for the Appellees, George O. Warnock, Charles J. Miller, and Bolt & McKenzie.

R. O. POLKINHORN, PRINTER, 632 and 634 D Street.



IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

ERNEST D. CORKER,
Appellant,

AND

FRANCIS A. JONES ET AL.,
Appellees.

Appeal from the Circuit Court of the United States for the Southern District of Georgia.

ARGUMENT AND BRIEF OF

SOLICITORS FOR THE APPELLEES, GEORGE O. WARNOCK, CHARLES J. MILLER AND BOIT & MCKENZIE.

The only privity between the complainant in the bill and these defendants grows out of the purchase by the latter of portion of the "Gilstrop and Watson place." They have no concern with the equities between the complainant and the executor of his former guardian. It matters not to them whether the balance on an account stated by the guardian to his ward be on the debit or credit side of the ledger. No charge of fraud or collusion is made or proven against them; they are *bona fide* purchasers for value.

They purchased their respective tracts from the sheriff of Burke county, as the property of Francis A. Jones, executor of Malcolm D. Jones, sold at public outcry under a decree of the Superior Court of Burke county, after the same had been duly advertised as provided in said decree, forty days in the paper published in the town of Waynesboro, and one paper in the city of Savannah, besides publication by hand-bills—no objection being made by any one.

Transcript of Record, page 21.

The complainant, however, seeks to go behind this decree by attempting to show that these defendants got no title at the sale held in pursuance thereof; for the reason, as he claims, that Malcolm D. Jones never had title to the "Gilstrop and Watson place," and therefore his executor could convey none.

The bill admits that Malcolm D. Jones claimed title to the "Gilstrop and Watson place" under and by virtue of a decree of the superior court of Burke county, in a bill instituted by the mother of Ernest D. Corker, as his next friend, against Malcolm D. Jones, for the purpose of cancelling in part the deed of 24th July, 1863, from the trustees of Hart to Malcolm D. Jones, guardian of Ernest D. Corker, so as to divest the title out of Ernest D., but leaving the same to stand as to Malcolm D., individually, and the makers thereof (see transcript of Record, page 43); said bill alleging that the estate of Ernest D. Corker was largely indebted to Malcolm D. Jones by reason of advances made by him to purchase said lands for other purposes; by which decree it was decreed "that said deed be, and is hereby, set aside and cancelled as to said Ernest D. only, and that it stand good against the makers thereof, and for the use and benefit of said Malcolm D., individually."

Transcript of Record, page 10.

The complainant in said bill was represented in court by his uncle, Stephen A. Corker, as solicitor.

Transcript of Record, page 64.

In accordance with the equity practice in Georgia the case was tried by a jury, who found that it was "to the interest of Ernest D. Corker, the minor, under his circumstances, that said purchase be rescinded and deed be cancelled and set aside as to said Ernest D., leaving it to stand as against the makers, and in favor of said Malcolm D., individually; and, if necessary, said Ernest D. make and deliver a proper conveyance of said land to said Malcolm D."

Transcript of Record, page 10.

The decree was based upon said verdict.

Transcript of Record, page 10.

The complainant in the present bill charges that said decree is absolutely collusive, fraudulent and void in law, having been rendered upon an assumed and false statement of facts, and by a court totally without jurisdiction in the premises.

Transcript of Record, page 4.

And for this reason he prays that the title of defendant be decreed to be given up for cancellation, and that they be made to account to the complainants for the rents, income and profits of said place.

Transcript of Record, page 5.

The merits of the bill in the present case, so far as regards these defendants, must therefore depend entirely upon the legal effect and validity of the decree of Burke Superior Court in the case of Corker, by next friend, vs. M. D. Jones; and hence the only questions with which these defendants have to do, are—

First. Is said decree void for want of jurisdiction in the court rendering it?

Second. Even though void, how far is the title of these defendants, who are *bona fide* purchasers to be affected thereby, under the peculiar circumstances of the case?

Third. Does the evidence show that said decree was obtained by fraud?

And Fourth. If obtained by fraud, what effect would fraud in that decree have upon the title of these defendants who are *bona fids* purchasers without notice?

First. As to jurisdiction of Burke Superior Court.

Did said court have the power to *hear* and *determine* (for that is the test of jurisdiction) the cause which was instituted by Sarah D. Croker, as next friend for her son, Ernest D. Croker, against Malcolm D. Jones, guardian of Ernest D.? That is the question.

It is an elementary principle of law that "nothing shall be intended to be out of the jurisdiction of a Superior Court but that which expressly appears to be so."

Gosset vs. *Howard*, 10 Q. B., page 453.

And the corollary of this proposition is that "though the existence of any jurisdictional fact may not be affirmed upon the record, it will be *presumed*, upon a collateral attack, that the court, if of general jurisdiction, has acted correctly and with due authority, and its judgment will be as valid as though every fact necessary to jurisdiction affirmatively appeared.

Freeman on Judgments, (3d addition), § 124, p. (top) 123.

Griquon's, Lessee vs. *Astor*, 4 Howard, p. 319.

So far as can be gathered from the pleadings, the appellant rests his objection to the jurisdiction of the Burke Superior Court chiefly on the ground that there was no *guardian ad litem* appointed in said cause; and in support of his position he relies on sections 1821 and 4224 of the Code of Georgia of 1873, which are in these words, viz.:

> "Section 1821. "Whenever a minor is interested in any litigation pending in any court in this State, and has no guardian, or his interest is adverse to that of his guardian, such court shall have power to appoint a guardian *ad litem* for such minor, which guardian shall be responsible to such minor for his conduct in connection with such litigation, in the same manner as if he were a regularly qualified guardian."
>
> "Section 4224. If minors are interested and they have no guardians, guardians *ad litem* must be appointed and notified before the cause proceeds."

The appellant claims that under these sections the appointment of a guardian *ad litem* was essential to give validity to the decree.

On the other hand, we contend that the above sections must be construed together with section 4179 of the same Code, being as follows:

> "Persons not being *sui juris* may appear, either by guardian, or next friend, or guardian *ad litem*, appointed by the court, In the latter two cases the court may require such bond as shall protect the interest of the person under disability."

By this section the right to sue by next friend is expressly given.

But, if there were any doubt on this point, the Supreme Court have put this doubt to rest.

In the case of *Johnson* vs. *Jones et al.*, 41 Ga., p. 596, Lochrane, *J.*, delivering the opinion of the Court, says:

> "The record in this case presents but a single point for adjudication. Jones, the defendant, is the guardian

> of Margaret Johnson, and was such at the time of the suit. The court dismissed the bill filed by the next friend against him, in which she avers sufficient equity to otherwise sustain the case, upon the sole ground that, having a guardian, she could not bring suit by *prochein ami* against her guardian. We will not go into the merits of the case but will dispose of the question made bo holding that the Judge committed error."

In the case of *Sloan* vs. *Nance et al.*, 45 Ga., page 310, it was held that—

> "Minors who have a guardianmay sue by *next friend* when their interest is adverse to that of their guardian—the court seemingly construing the expression, guardian *ad litem*, as used in sections 1821 ——— as synonymous with 'next friend.'"

And in a much more recent case this view is expressly taken, the court saying:

> "It would seem from the authorities that there is no substantial difference between a *porchein ami* and a guardian *ad litem*. The former denomination is usually applied, where the representation is for an infant plaintiff, and the latter where it is for an infant defendant."
>
> *Sharp, Adm'r.* vs. *Findley et al.*, 59 Ga., page 729.

But admitting the proper practice requires the appointment of a guardian *ad litem* where the interest of a minor is concerned, in absence of direct proof to the contrary it will be presumed that the Burke Superior Court complied with all the requisites of the law, and made such appointment.

Be this as it may, the failure to appoint a guardian *ad litem* would not render the decree void. Indeed section 3263 of the Code of Georgia provides in so many words, that "A suit commenced and prosecuted by an infant alone is not void, and although the suit is defective in wanting a guardian or *next friend*, the defect is amendable before verdict and cured by verdict."

And under this section the Supreme Court of Georgia have held that, if a mother undertakes to file a bill for her minor child, the verdict and the decree bill bind the minor even though the court does not formally appoint the mother *next friend.*

King vs. *King*, 37 Ga., pages 216–217.

At common law, an infant plaintiff is as much bound and as little privileged as a person of full age.

2 Peere Williams, pages 518–519.

Even a consent decree will bind a minor.

1 Dan. Chan. Pract., page 98.

That the subject matter of the suit was within the jurisdiction of equity can scarcely be seriously questioned. By advancing the purchase money Jones had a resulting trust in the "Gilstrop and Watson place," the establishment of which is always cognizable in a court of equity.

Story's Equity Jur., vol. 2, § 1201.

This principle is fully recognized in *Johnson* vs. *Jones, et al.*, 48 Ga., page 558, cited ante.

But further, the act of Jones, guardian, investing in lands was unauthorized and the effect of the decree of Burke Superior Court was to set aside this unauthorized act.

Code of Georgia, 1873, § 2330, reading thus:

> "Any trustee holding trust funds may invest the same in stocks, bonds, or other securities, issued by this State, making a true return ofthe price paid, and time of purchase. Such investments shall be free from taxation so long as held for the trust estate. Any other investments

of trust funds must be made under an order of the Superior Court, either in term, or granted in vacation, or else at risk of trustee."

This section applies to guardians.

Brown vs. *Wright and wife*, 39 Ga., pages 99–101.

Secondly, As to the effect of said decree if void.

Here it should be noted parenthetically that discovery is not waived by the complainant in his bill, and therefore the answers of defendants as to facts within their own knowledge, responsive to the discovery sought is evidence in their favor.

The record shows that the decree of the Burke Superior Court was rendered in 1868, and the complainant admits in his bill that Malcolm D. Jones went into possession of the "Gilstrop and Watson place" immediately after its passage.

The answer of Francis A. Jones avers that on the death of Malcolm D. Jones in 1869, he took possession of the "Gilstrop and Watson place," and that no claim was made thereto by the complainant or his guardian or any one, in his behalf, and no notice given in any way of any intention on the part of the complainant to claim any interest in said place.

See Transcript of Record, page 16.

Said plantation was sold on the 8th day of July, 1873, at public outcry, under a decree of the Superior Court of Burke county, after being advertised for forty days in the Waynesboro, Augusta and Savannah papers and by hand-bills.

See answer of these defendants, Transcript of Record, page 21.

At the time of said sale the complainant, Corker, was represented by a guardian and was seventeen years of age.

The bill nowhere sets up ignorance on the part of the

complainant or his guardian as to said equity proceedings and the sale thereunder. On the contrary, the strong inference from the allegation is, that they were both cognizant thereof.

No objection was made by anyone to the sale, and these defendants aver in their answers that it is their belief that complainant and his guardian were at the time aware that said sale was going to take place,

Transcript of Record, page 21.

If the complainant was represented (and it is understood that he had a guardian) and had notice of said decree and the sales thereunder, and made no objection thereto, but suffered others in good faith to purchase his property and pay their money therefor, he cannot now recover the property from the purchasers.

Herman on Estoppel, page 481–482.

2 Kent Comm., page 258, note.

Thirdly. As to whether the decree of the Burke Superior Court was obtained through fraud.

This is a question of fact. Fraud will not be inferred. The verdict and decree are regular on their face.

The answers of defendants deny any knowledge of fraud.

The only witness introduced by the part of the complainant was Emanuel Heidt, who makes no charge of fraud against Malcolm D. Jones. This witness states that Mrs. Corker admitted that Malcolm D. had made advances to purchase the Gilstrop plantation.

Transcript of Record, page 42.

On the part of defendant, J. W. Carswell testifies:

> "I am satisfied that the money paid for said land at the time was paid by Mr. Malcolm D. Jones, and for this

reason, that from my connection with the estate of Ernest D. Corker, it was not possible for that much money to be in the hands of Mr. Malcolm D. Jones for him."

Transcript of Record, page 61.

Stephen A. Corker, the uncle of the complainant, says:

"I knew Sarah D. Corker, mother of Ernest D. Corker; she is now dead; in year 1867 or 1868, M. D. Jones handed me a note in writing from Sarah D. Corker, and from the best of my knowledge of her handwriting it was signed by her, in which she directed me as her solicitor to file a bill in equity, the object of which was to divest title as to Ernest D. Croker in the Gilstrop place, and to vest title in M. D. Jones, individually, who was now the guardian of said minor, E. D. Croker, and to provide furthermore that the indebtedness of said minor's estate to M. D. Jones should be cancelled; the bill was filed, and in the name of Sarah D. Corker as next friend of Ernest D. Corker; a decree was rendered accordingly; witness did not see Mrs. Sarah D. Corker, but does not think there was any fraud in it; I do not know whether the $45,600 was due M. D. Jones or not, except by hearsay. Witness heard no conversation between Sarah D. Corker and M. D. Jones; all witness knows is the note referred to; know of no collusion except that they co-operated in the matter, and it seemed to be a matter of consent between them."

Transcript of Record, page 64–65.

Francis A. Jones says:

"After the results of the war, cotton being burned, negroes freed, stock carried away and killed by Sherman's army, plantation devasted, and a large debt due by E. D. Corker to M. D. Jones, his guardian, for 'Gilstrop and Watson place,' I thought it very wise in Corker's mother, as his next friend, to apply to the Supreme Court of Burke county, Georgia, as shown by the records of her attorney, Stephen A. Corker, a friend and relative, to cancel the deed made by Hart to M. D. Jones, guardian for Corker for 'Gilstrop and Watson place,'

and relieve the said Corker of the large debt against him."

Transcript of Record, page 67.

It is hardly probable that the boy's mother and uncle would conspire with his guardian to defraud him.

Fourthly. But admitting that the evidence does show that said decree had been obtained by fraud and collusion, what is the effect on the title of *bona fide* purchaser without notice?

The verdict and decree are regular upon their face and no fraud is apparent therein; indeed there is nothing in the record to put an innocent party on his guard; on the contrary, in order to make out a case of fraud in this matter, it would have been necessary to introduce evidence *aliunde.*

We admit that as between parties fraud will vitiate any contract, judgment or decree; but "a purchaser under a decree will not be affected by fraud in the proceedings of which he himself is innocent, unless it is apparent on the face of the record."

Kerr on Fraud and Mistake, pages 317–318.

The Georgia law is explicit on this subject.

See the following sections of the Georgia Code of 1873.

Section 3119. "Equity will grant relief as between the original parties of their privities in law, in fact, or in estate, except *bona fide* purchasers for value without notice."

Section 2640. "A title obtained by fraud, though voidable in the vendee, will be protected in a *bona fide* purchaser without notice."

Section 3092. "A *bona fide* purchaser for value, and without notice of an equity, will not be interfered with by a court of equity."

Section 4467. "Any verdict, or judgment, rule of order of court, which may have been obtained or entered up, shall be set aside and be of no effect, if it shall appear that the same was obtained or entered up in consequence of willful and corrupt perjury, and it shall be the duty of the court in which such verdict, judgment rule or order may have been obtained and entered up, to cause the same to be set aside, upon motion and notice to the adverse party; but it shall not be lawful for the said court to do so, unless the person charged with said perjury, shall have been thereof duly convicted, and unless it shall appear to the said court that the said verdict, judgment, rule or order could not have been obtained or entered up without the evidence of such perjured person, saving always to third persons, innocent of such perjury, the right which they may have lawfully acquired under such verdict, judgment, rule or order, before the same shall have been actually vacated and set aside."

Summing up, we urge as the necessary and legitimate conclusions arising from the law and facts of the case the following.

First. That the decree of Burke Superior Court in the case of Ernest D. Corker by Sarah D. Corker, his next friend, is not void.

Second. That were it void, yet, under the evidence, these defendants would be protected in their title against the complainant.

Third. That there is nothing in the evidence to warrant the assumption that said decree was "rendered upon an assumed and false statement of facts."

And Lastly. That in as much as there is no fraud apparent upon the face of said decree, these defendants who are *bona fide* purchasers without notice, will be protected in their title, even though it should appear from evidence *aliunde*

that said decree had been as a matter of fact obtained by fraud and collusion.

In conclusion we respectfully submit "that nothing appears to impeach the titles of the defendants to the premises described in said bill as the Gilstrop and Watson place," and that therefore the decree of the Circuit Court should be affirmed with costs.

RANDALL HAGNER.

Solicitor for Appellees, George O. Warwick, Charles J. Miller and Boit & McKenzie.